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PARLIAMENT

ITS HISTORY, CONSTITUTION AND PRACTICE

BY

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PARLIAMENT

CHAPTER I

ORIGIN AND DEVELOPMENT

THE word "parliament" originally meant a talk. In its Latin form it is applied by monastic statutes of the thirteenth century to the talk held by monks in their cloisters after dinner, talk which the statutes condemn as unedifying. A little later on the term was used to describe solemn conferences such as that held in 1245 between Louis IX of France and Pope Innocent IV. When our Henry III summoned a council or conference of great men to discuss grievances he was said by a contemporary chronicler to hold a parliament. The word struck root in England, and was soon applied regularly to the national assemblies which were summoned from time to time by Henry's great successor, Edward I, and which took something like definite shape in what was afterwards called the "model parliament" of 1295. The word, as we have seen, signified at first the talk itself, the conference held, not the persons holding it.

By degrees it was transferred to the body of persons assembled for conference, just as the word "conference" itself has a double meaning. When Edward I was holding his parliaments institutions of the same kind were growing up in France. But the body which in France bore the same name as the English parliament had a different history and a different fate. The French "parlement" became a judicial institution, though it claimed to have a share in the making of laws.

The history of the English parliament may be roughly divided into four great periods; the period of the mediæval parliaments, of which the parliament of 1295 became the model and type; the period of the Tudors and Stuarts, having for its central portion the time of conflict between king and parliament, between prerogative and privilege; the period between the Revolution of 1688 and the Reform Act of 1832; and the modern period which began in 1832.

Let us try and trace, in broad outline, the elements out of which the parliament of 1295 grew up, and the main stages through which its development passed.

It had always been regarded in England as a principle that in grave and important matters, such as the making of laws, the king ought not to act without counsel and consent. The counsel and consent which the Saxon kings sought was that of their wise

men, and the "Witenagemot" of English constitutional history was a meeting of these wise men. It seems, says Maitland, to have been a very unstable and indefinite body. It was an assembly of the great folk. When there was a strong king it was much in his power to say how the assembly should be constituted and whom he would summon. When the king was weak the assembly was apt to be anarchical. The Saxon witenagemot was not numerous. Small men, especially if they lived at a distance, could not come. Great men often would not come. The institution was not much of a safeguard against oppression. Still it was an important fact that, on the eve of the Norman conquest, no English king had taken on himself to legislate or tax without the counsel and consent of a national assembly, an assembly of the wise, that is of the great.

The Norman conquest made a great break in English institutions, but not so great as was at one time supposed. In the first place William the Conqueror had to build with English materials, and on English foundations. In the next place English institutions had, during the reign of Edward the Confessor, been rapidly approximating to the continental type. What William did was to emphasize, rather than to introduce, certain principles of what was afterwards vaguely described as the "feudal system," and to adapt them to his own purposes. He insisted

on the principle that all land in the country was ultimately held of the king. There were to be no full owners of land under him only holders or tenants. He insisted on the principle that every landholder in the country owed direct allegiance to the king. The landholder might hold his land under, and owe allegiance to, another lord, but his oath of allegiance to that lord was qualified by his allegiance to the king. And, in portioning out the English soil among the motley band of adventurers who had followed him and whom he had to reward for their share in his raid, he tried to break the strength of the greater men, by scattering their estates over different parts of England, and by mixing up with them smaller men, who held their land, not under any intermediate lord, but directly under the king. He did not wholly succeed, as he and those after him found to their cost. But the existence, by the side of the greater lords, of a number of comparatively small landholders, who also held their land directly from the king, had an important bearing on the development of parliament. The Norman kings were despots, untrammelled by any constitutional restrictions, and controlled only by the resistance of powerful and turbulent subjects. But there were the traditions of better things past; there were the charters, often broken but always there, by the help of which kings with doubtful titles obtained succession, and

in which they promised to observe those traditions; and there was a feeling that, apart from these promises, it was prudent and politic to obtain an expression of counsel and consent, if it could be obtained. "Thrice a year," says the Saxon chronicle of the Conqueror, "king William wore his crown every year he was in England; at Easter he wore it at Winchester, at Pentecost at Westminster, and at Christmas at Gloucester; and at these times all the men of England were with him—archbishops, bishops and abbots, earls, thegns and knights." "All the men of England." What did this mean? To the Saxon chronicler it probably meant the men who counted, the wise and great, the men who might have been expected to attend a witenagemot. But William's court was a feudal court, and from the Norman point of view perhaps it was an assembly of the king's tenants in chief. These, however, were numerous, and many of them were small men, so that probably only a select few were summoned. Courts or great councils of the same kind were held under the later Norman kings, but we know little about their composition or functions. All that can be said with safety is that the few legislative acts of this period were done with the counsel and consent of the great men.

What we have to watch is the transformation of the body whose counsel and consent is required from a merely feudal body, a body

of great vassals or tenants in chief, to a body more representative of the nation at large.

Henry II did something when he imposed a tax on movables, the Saladin tithe of 1188, and had it assessed by a jury of neighbours, a jury in some sense representative of the taxpayer and of the parish in which he lived, and thus brought into connection the ideas of taxation and representation.

The Great Charter of 1215 declared that exceptional feudal aids were not to be levied without the common counsel of the realm. But this counsel was to be given by an assembly consisting of prelates and great lords summoned singly, and of tenants in chief summoned collectively through the sheriffs. So it was still a feudal assembly.

A further step was taken when, in 1254, at a time when Henry III was in great need of money, each sheriff was required to send four knights from his county to consider what aid they would give the king in his great necessity. For these knights represented, not the tenants in chief, but all the free men of their county. They were representatives of counties.

Eleven years later, in 1265, Simon de Montfort summoned to his famous parliament representatives, not merely of counties, but also of cities and boroughs.

Edward I held several great assemblies, which were usually called parliaments, and which made some great laws, but some of

these laws were made without the assent of representatives of the commons.

The model parliament, which settled the general type for all future times, was held in 1295. To this parliament King Edward summoned separately the two archbishops, all the bishops, the greater abbots, seven earls and forty-one barons. The archbishops and bishops were directed to bring the heads of their cathedral chapters, their archdeacons, one proctor for the clergy of each cathedral, and two proctors for the clergy of each diocese. Every sheriff was directed to cause two knights of each shire, two citizens of each city, and two burgesses of each borough, to be elected.

Two points should be specially noticed about the constitution of this parliament.

In the first place it was not a feudal court, nor a meeting of the king's tenants, but a national assembly. Edward had suffered much in his father's time from the great barons, who had made him prisoner at the battle of Lewes, and he wished to draw counsel and help from other quarters. His parliament was intended to represent the three great estates or classes into which mediæval society might be roughly divided, the clergy, the barons, and the commons; those who pray, those who fight and those who work, as Maitland puts it. The same idea underlay the States General which were coming into existence about the same time in France, and which met, at intervals, during

many centuries. After an interval of 175 years the three estates of France were for the last time summoned to meet as separate bodies in 1789, but were at once merged in the national assembly which began the French Revolution.

The idea of the three estates was never realized in England. The clause by which archbishops and bishops were directed to bring with them representatives of their clergy, a clause still remaining in the writ by which they are summoned at the present day, was persistently ignored. The clergy as a body preferred to stand aloof, to meet in their own clerical assemblies or convocations, and to settle there what contribution they would make to the king's needs. The archbishops, bishops and greater abbots attended, as they had attended the great councils of previous kings. But then they were not merely clerics, they were great feudal lords and great holders of land.

The knights of the shires were drawn from the same class as the greater barons. The word "baron" originally meant simply "man," and for some time there was much uncertainty as to who should be treated as a man so great as to be entitled to a separate summons, and who should be left to be represented, like other freemen of the lesser sort, by the knights of the shires. The title of baron came eventually to be confined to the greater men who were summoned separately.

The knights who represented the shires, when they came to Westminster, mingled themselves with the representatives of the cities and boroughs. In the time of Edward III there was a risk of the merchants being consulted as a separate class for the purpose of taxation, but this risk was avoided. If things had fallen out somewhat differently the English parliament might have sat as three separate houses, as in France, or might have been grouped in a single house, as in Scotland, or might have formed four houses, as in Sweden. But the inferior clergy abstained from attendance, the greater clergy, the spiritual lords, sat with the lay or temporal lords, and the knights of the shires threw in their lot with the citizens and burgesses. Thus parliament became an assembly, not of three estates, but of two houses, the house consisting of the lords spiritual and temporal, and the house representing the commons, the house of lords and the house of commons.

The other point to be noticed is that parliament was an expansion, for temporary purposes, of the king's continuous council. The Norman and Plantagenet kings, like other kings, needed continuous assistance, both for domestic and ceremonial purposes, and for the business of government, such as the administration of justice, and the collection and expenditure of revenue. The courts or councils composed of the men on whom the king most relied for this assistance bore

various names, varied in number, and exercised varying functions. As the work of government increased and specialized, these nebulous bodies split up into more coherent parts, with more definite functions, and out of them grew the king's courts of justice and the great departments of the central government. When the king held his great assemblies it was necessary that he should have about him the men on whom he was accustomed to place special reliance for advice and assistance. Accordingly there were summoned by name to the parliament of 1295 men who were not earls or barons, but were members of the king's council, and in particular the king's judges. And to this day the judges of the supreme court are summoned to parliament, and some of them take their seats in the house of lords when the king opens parliament.

The fact that the mediæval parliament was an expansion of the king's council explains the nature of the business which it had to transact. The immediate cause of summoning a parliament was usually want of money. The king had incurred, or was about to incur, expenses which he could not meet out of his ordinary resources, such as the revenues of his domain and the usual feudal dues. He summoned a parliament and, through his chancellor or some other minister, explained what he wanted and why he wanted it. The king's speech might touch on other great

matters, about which he might need advice or approval, but money was the gist. On the other hand the king's subjects had grievances for which they desired redress. The grievances would be of different kinds, breach of old customs, failure to observe charters or laws, oppression by the king's officers or by great men, maladministration of justice, difficulties in the way of settling private disputes, and so forth. For the redress of these grievances petitions were presented, petitions which in their multifarious character were not unlike the statements of grievances presented to the national assembly, on the eve of the French Revolution. The petitions were to the king in parliament or to the king in his council, and parliament was the petitioning body, the body by or through whom the petitions were presented. The remedies required would be classified in modernl anguage as judicial, legislative or administrative. But in the thirteenth century, these distinctions had not been clearly drawn. A statute made by Edward I in his parliament of 1292, known as the Statute of Waste, and based on a petition presented to him in that parliament, supplies a good illustration of the way in which judicial, legislative and administrative remedies might be combined. The statute begins with a long story showing how Gawin Butler brought a complaint before the king's justices about waste done to his land, but died before obtaining judgment; how his

brother and heir, William, who was under age and a ward of the king, sought to continue the proceedings; and how the justices differed in opinion as to whether he was entitled to do so. Thereupon the king, in his full parliament by his common council or by general consent (for the Latin phrase wavers between the two meanings of "council" and "counsel") ordains that all heirs may have an action by writ of waste for waste done in the time of their ancestors, and the king himself commands his justices to give judgment accordingly. Here the king acts partly in his legislative capacity, laying down a general rule, partly in his judicial capacity, as having power to review and control the proceedings of his justices, and partly in an administrative capacity as guardian of an infant heir.

At the beginning of each parliament the king, or his great council on his behalf, appointed persons to receive and to try these petitions, that is to say to sort them out, to consider what remedy, if any, each petition required, and to devise an appropriate form of remedy. The triers or auditors of petitions were really committees of the king's council. Until near the close of the nineteenth century receivers and triers of petitions from England, Scotland and Gascony, respectively (for Edward I ruled in Gascony as well as England) were appointed at the beginning of each parliament by an entry in the lords journals. But their functions had ceased for many centuries.

The sittings of an early Plantagenet parliament did not extend over many days. Travelling was difficult, dangerous and costly; members could not afford to stay long away from their homes. The main object of the meeting was usually to strike a bargain between the king and his subjects. The king wanted a grant of money, and it was made a condition of the grant that certain grievances, about which petitions had been presented, should be redressed. When an agreement had been arrived at as to how much money should be granted and on what terms, the commoners and most of the lords went their ways, leaving the king's advisers, the members of his council, to devise and work out, by means of legislation or otherwise, such remedies as might be considered appropriate and advisable.

It is to the Plantagenet period that we owe the most picturesque of our parliamentary ceremonials, those which attend the opening of Parliament and the signification of the royal assent to Acts. And we ought to think of the Pantagenet parliament as something like an oriental durbar, such as was held by the late Amir of Afghanistan, with the king sitting on his throne, attended by his courtiers and great chiefs, hearing the complaints of his subjects and determining whether and how they should be met.

Of the changes in the composition of parliament which took place during this period

something will be said later on, but a few words must be said here about the changes in its powers and functions, specially with respect to the two main branches of its business, taxation and legislation.

Before the end of the fourteenth century parliament had established two principles of taxation. In the first place they had taken away the power of the king to impose direct taxes without their consent, and had restricted his power to impose indirect taxes without their consent to such taxes as might be justified under the customs recognized by the Great Charter. In the second place parliament had acquired the right to impose taxes, direct and indirect, of all kinds. In imposing these taxes they did not care to go beyond the immediate needs of the case. Hence the necessity for frequent parliaments.

According to the theory of the three estates, each estate would tax itself separately, and this theory was at first observed. The clergy granted their subsidies, not in parliament but in convocation, and continued to do so, in theory at least, until after the Restoration of 1660. But long before this time they had agreed to grant or submit to taxes corresponding to those imposed on the laity. At a much earlier date, before the end of the fourteenth century, the lords and commons, instead of making separate grants, agreed to join in a common grant. And, as the bulk of the burden fell upon the commons, they

adopted a formula which placed the commons in the foreground. The grant was made by the commons, with the assent of the lords spiritual and temporal. This formula appeared in 1395, and became the rule. In 1407, eight years after Henry IV came to the throne, he assented to the important principle that money grants were to be initiated by the house of commons, were not to be reported to the king until both houses were agreed, and were to be reported by the Speaker of the commons house. This rule is strictly observed at the present day. When a money bill, such as the finance bill for the year or the appropriation bill, has been passed by the house of commons and agreed to by the house of lords it is, unlike all other bills, returned to the house of commons. On the day for signifying the royal assent the clerk of the house of commons takes it up to the bar of the house of lords, then hands it to the Speaker, who delivers it with his own hand to the officer charged with signifying the king's assent, the clerk of parliaments.

Ever since the reign of Henry VII the enacting formula of Acts of Parliament has run thus—

"Be it enacted by the king's (or queen's) most excellent majesty by and with the advice and assent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows." This formula grew into

shape in what has been called above the mediæval period of parliament. At the beginning of this period the king made laws with the requisite advice and assent. One important early Act was expressed to be made at the instance of the great men. Later on the concurrence of the whole parliament, including the commons, became essential. But the commons usually appear at first in a subordinate position. Throughout the fourteenth century the kind of form most usually adopted is that a statute is made with the assent of the earls, prelates and barons and at the request of the knights of the shires and commons in parliament assembled. The commons appear as petitioners for laws rather than as legislators. And this is in fact what they were. They presented their petitions, which might ask for amendment or clearer declaration of the law. It was for the king, with the aid of those more intimately in his counsels, to determine whether legislation was required and if so what form it should assume. Throughout the fourteenth century there was much risk that, even if the making of a law were granted, the law, when made, would not correspond to the petition on which it was based. The statute was not drawn up until after the parliament was dissolved, its form was settled by the king's council, and there were many complaints about the variance between petitions and statutes. At last in 1414, soon after the accession of Henry V, the king con-

ceded the point for which the commons had repeatedly pressed. The commons prayed "that there never be no law made and engrossed as statute and law neither by additions nor discriminations by no manner of term or terms which should change the sentence and the intent asked." And the king in reply granted that from henceforth "nothing be enacted to the petition of the commons contrary to their asking, whereby they should be bound without their assent." This concession led to an important change in the method of framing statutes. It became the practice to send up to the king, not a petition, but a bill drawn in the form of a statute, so that the king was left no alternative beyond assent or dissent. Legislation by bill took the place of legislation on petition. This practice became settled about the end of the reign of Henry VI.

The changes in practice were reflected by changes in the legislative formula. Statutes were expressed to be made by the advice and assent of the lords and the commons, thus putting the two houses on an equal footing. And before the middle of the fifteenth century a significant addition was made to the formula. Statutes were expressed to be made, not only with the advice and assent of the lords and commons in parliament, but "by the authority of the same." This was an admission that the statute derived its authority from the whole parlia-

ment. The two houses had become not merely an advising, consenting, or petitioning body, but a legislative authority.

The power to refuse assent to legislation still remained, and it was often exercised until a much later date. It was signified in a courteous form—"The king will consider."

The political power of parliament grew rapidly in the fourteenth and fifteenth centuries. In 1327 a parliament which had been summoned in the name of Edward II resolved, in summary fashion, on his deposition and forced him to resign. But the proceedings on the deposition of Richard II were more formal. Richard was forced to summon a parliament, and then to execute a deed of resignation. The parliament assembled in Westminster Hall, which Richard had rebuilt, and which stood then much as it stands now. Parliament accepted his resignation and went on, by further resolutions, to declare that he was deposed and to resolve that Henry of Lancaster should be king in his place. A parliament which could thus make and unmake kings was a formidable body. The Lancastrian kings, it has been said, were kings by Act of Parliament; they meant to rule and did rule by means of parliament. In the quarrels of the seventeenth century between king and commons men looked back to the Lancastrian period as the golden age of parliament, and precedents from that period were freely quoted for parliamentary use. But in

the fifteenth century the times were not ripe for parliamentary government. The powers of parliament fell into the hands of turbulent nobles. Henry V was a famous and capable warrior. But Henry VI began his reign as an infant, and ended it as an idiot; he was ruled by unscrupulous uncles and a termagant queen; and the bloody faction fights known as the Wars of the Roses brought the Plantagenet dynasty to a close, weeded out the older nobility, and cleared the way for a new form of monarchy.

The age of the Tudors, at least during the reigns of Henry VIII and Elizabeth, is a period of strong monarchs governing through the strength of parliament. Henry VIII accepted Henry IV's principle that the king should rule through parliament, but worked that principle in an entirely different way. He made parliament the engine of his will. He persuaded or frightened it into doing anything he pleased. Under his guidance parliament defied and crushed all other powers spiritual and temporal, and did things which no king or parliament had ever attempted to do, things unheard of and terrible. Elizabeth scolded her parliaments for meddling with matters with which, in her opinion, they had no concern, and more than once soundly rated the Speaker of her commons. But she never carried her quarrels too far and was always able to end her disputes by some clever compromise. The

result was that her parliaments usually acquiesced in and gave effect to her wishes. Before Henry VIII the life of parliament was usually comprised within a single session, and the sessions were short. Parliaments now grew longer. Henry VIII's Reformation parliament lasted for seven years. One of Elizabeth's parliaments lasted for eleven years, though, it is true, it held only three sessions. Parliament was no longer a meeting dissolved as soon as some specific business was finished. It tended to become a permanent power in the State, and a power with formidable attributes. A monarch that swayed and did not fear parliament could afford to recognize its sovereignty, for it was his own. And never were the authority and sovereignty of parliament more emphatically asserted than in Tudor times. Sir Thomas Smith was secretary to Queen Elizabeth, and in a book which was published in 1589, and which he called *The Commonwealth of England and the manner of government thereof*, he declares that "the most high and absolute power of the realm of England consisteth in the parliament." Such doctrines could be preached with safety while Tudor kingcraft remained; when it departed they shook and upset the throne.

It was in Tudor times that both houses began to keep their journals and that the house of commons acquired a permanent home of their own. But these are matters of which more will be said hereafter. Owing

to the existence of the journals we now begin to know much more about the proceedings of parliament than in previous times. Under the Plantagenets some of the characteristic features of parliamentary procedure, such as the three readings of bills, had been settled, but had not been recorded. In the journals the dates of each reading are given. The entries are at first scanty, but are soon amplified. Rulings and practices are noted, precedents are searched for and observed. The records of the Elizabethan journals are expanded by Sir Symonds d'Ewes from other sources. Sir Thomas Smith, in the book referred to above, and Hooker, in the book which he wrote for the guidance of the parliament at Dublin, have given us descriptions which enable us to understand how business was conducted in the English parliament under the great queen. The general outlines of parliamentary procedure were settled, and much of the common law of parliament, the law which is not to be found in standing orders, may be traced back to Elizabethan times.

James I came to the throne by inheritance. He talked much and foolishly about his divine right to rule, and soon came into collision with his parliaments. Parliament claimed and obtained some important rights, such as the right to adjourn without the king's leave, and the right to determine disputes about the validity of elections. Other questions, such

as the right to levy taxes, remained to be fought out under his successor. The king and parliament were hostile bodies, and parliament was jealous of the king's interference with, or even knowledge of, its proceedings.

The main lines of parliamentary procedure were settled during the seventeenth century. The committee system grew up under Elizabeth and her successor. Small committees were appointed to consider the details of bills and other matters, and sat either at Westminster or sometimes at the Temple or elsewhere. For weightier matters larger committees were appointed and had a tendency to include all members who were willing to come, for the difficulty was to obtain a quorum. Hence the system of grand committees, and of committees of the whole house, which will be described in a later chapter. Before the end of the seventeenth century parliamentary procedure began to follow the lines which it retained until after the Reform Act of 1832. The first edition of Sir Erskine May's book on parliamentary procedure was published in 1844, and "the parliamentary procedure of 1844," says Sir R. Palgrave in his preface to the tenth edition, "was essentially the procedure on which the house of commons conducted its business during the long parliament."

The constitutional quarrel of the seventeenth century, which culminated in the great civil war, was at first whether govern-

ment should be by the king or by the king in parliament, afterwards whether the king should govern or whether parliament should govern. Strafford, the strong minister of a weak king, tried to govern without parliament, and failed. The long parliament tried to govern without a king, and failed. During the revolutionary period the house of commons set up executive committees, foreshadowing the famous executive committees of the French Revolution; but government by committees was not a success. The great rule of Cromwell was a series of failures to reconcile the authority of the "single person" with the authority of parliament. The monarchical régime which was revived under Charles II broke down under James II. It was left for the "glorious revolution" of 1688, and for the Hanoverian dynasty, to develop the ingenious system of adjustments and compromises which is now known, sometimes as cabinet government, sometimes as parliamentary government. Of the growth and working of this system more will be said hereafter.

The two last of the parliamentary periods referred to above must be passed over very lightly. The eighteenth century was a great age of parliamentary oratory, but it was not an age of great legislation. The territorial magnates who, or whose nominees, as knights of the shires or members for pocket boroughs, constituted the house of

commons, contented themselves in the main with formulating as Acts of parliament rules for the guidance of landowners as justices of the peace. Parliamentary procedure tended to stiffen and become more formal. Important constitutional changes were silently going on, but they were not, as a rule, marked by legislation. One of the few exceptions was the Septennial Act of 1715, which extended from three years, the limit fixed by an Act of 1694, to seven years, the maximum duration of a parliament. Power rested first with the families of the great Whig magnates who had brought about the Revolution of 1688, then for a time with the king and his "friends," and finally with the parliamentary genius whom George III was fortunate enough to obtain as chief adviser, the younger Pitt.

The earthquake of the French Revolution, which shook all Europe, and changed its surface, did not extend across the English Channel. It produced effects here, but its immediate effects were those of resistance and reaction, and its results were to prolong the period of the old régime for more than thirty years after the close of the eighteenth century.

Leipsic and Waterloo stopped the course of the Revolution in Europe. But, after a trial of fifteen years, the revived French monarchy of the Restoration died in the Paris barricades of 1830. Two years later

the Act of 1832 reformed the constitution of the house of commons, and brought fresh powers into play. After the lapse of another two years the fire of October 16, 1834, destroyed the ancient home of parliament. Of the buildings which had sheltered parliaments for so many centuries nothing now remains above ground except the great hall which William Rufus built and Richard II rebuilt, and some parts of the cloisters which were added to St. Stephen's Chapel shortly before the dissolution of its chapter. The new parliament had to build a new home, the home which is the present Palace of Westminster.

CHAPTER II

CONSTITUTION OF THE HOUSE OF COMMONS

It is from no disrespect for the house of lords that the description of that house is reserved for a later chapter, but because the principal share of parliamentary business is transacted in the house of commons; because the position of the older house is, under our constitution, subordinate; and because the position and functions of the house of lords cannot be understood until the functions of the house of commons have been explained.

A double thread of meaning runs through the word "commons." Technically, the house of commons, at the time of its institution, was the community or body representing the communities of the counties and of the boroughs. "The commons," says Stubbs, "are the communities, the organized bodies of freemen of the shires and towns, and the estate of the commons is the general body into which, for the purposes of parliament, these communities are combined." But the word has another shade of meaning, reflected in the modern use of the word "commoner." The commons are those who are not included in either of the special classes of clergy and

barons. "The persons who enjoy no special privilege," says Maitland, "who have no peculiar status of barons or clerks, are common men." In this sense they correspond to the third estate of France, which, on the eve of the French Revolution, according to Sieyès, was nothing, wished to be something, and ought to be everything.

The technical meaning of the word is, for historical purposes, of great importance. Before the time of parliaments both the counties and the boroughs had been recognized as communities for judicial, fiscal and administrative purposes, and the counties acted as such in their county courts. The boroughs were winning for themselves, through charters, communal rights resembling and often suggested by those of the French communes. It was but a step forward to utilize existing ideas and institutions for the purpose of national and parliamentary representation.

The history of the county franchise is comparatively simple. The sheriffs were directed by their writs to cause an election to be held of two knights for each shire; election was to be made in and by the county court; and the electors were those who were entitled to attend and take part in the proceedings of that court. No further definition of the machinery of election was attempted, or was, at first, necessary. The sheriff would conduct the proceedings in the customary

fashion, and would have a good deal to say as to who should take part in them. It was not until the reign of Henry VI that any statutory restriction was placed on the class of electors. The Act of 1430, which was passed to prevent riotous and disorderly elections, directed that the electors were to be people dwelling in the county, whereof every one was to have free land or tenement to the value of forty shillings a year at least (a high value for that period) above all charges. This Act continued to regulate the county franchise for more than four centuries, until the Reform Act of 1832. But the definition of the qualifying freehold gave much employment to lawyers and parliamentary committees, and its meaning was so interpreted as to facilitate the manufacture of qualifications and the creation of faggot voters. Leaseholders and copyholders had no votes.

The number of parliamentary counties did not vary much before 1832. At first there were thirty-seven counties returning two members each. The counties of Chester and Durham, which were counties palatine, and under a semi-independent authority, did not come into the parliamentary system until a later date. Henry VIII brought in the Welsh counties. The Union with Scotland and with Ireland completed the list.

The history of the borough franchise is far more complicated. In the first place the

writs addressed to the sheriff for returns to the early parliaments merely told him to provide for the return of two members for each city or borough in his county, and did not specify the places which were to be treated as boroughs. That was assumed to be known. Hence much room for uncertainty and for the exercise of discretion on the part of the sheriff. It had not yet been discovered that representation of a borough in parliament was a source of profit, local or personal, to the borough, or conferred much personal advantage on its representative. On the contrary, when members were paid wages by their constituencies, and when places recognized as boroughs were taxed for subsidies at a higher rate than shires, representation in parliament was an onerous privilege. Towns often desired not to be represented, and probably made arrangements with the sheriff for this purpose. Later on the tide turned and in the sixteenth and seventeenth centuries the number of boroughs increased with great rapidity. The increase was effected in various ways. A borough which had ceased to return members might be revived in pursuance of a direction to the sheriff. The king might grant a charter giving a right of representation. At a later date a resolution of the house of commons sufficed for the right. The Tudor monarchs exercised freely their power of creating boroughs by charter. They used their parliaments and had to find means of

controlling them. In the creation of "pocket" or "rotten" boroughs, Queen Elizabeth was probably the worst offender. She had much influence in her duchy of Cornwall, and many of the Cornish boroughs which obtained such a scandalous reputation in later times were created by her for the return of those whom the lords of her council would consider "safe" men. The practice of creating new parliamentary boroughs by charter lessened under the Stuarts, and fell into desuetude after the reign of Charles II. The charter which he granted to Newark was the last royal charter conferring a parliamentary franchise.

There was no Act for the re-distribution of borough seats until 1832, and an interesting map prefixed to the first volume of Mr. Porritt's *Unreformed House of Commons*, shows how borough representation stood at that date. A glance at the map will disclose two features, first, the proportionately large number of boroughs on or near the coast from the Wash southwards and westwards to the Severn estuary, and next, the dense cluster of little boroughs in the extreme south-west. To some extent these features were survivals from an age of different social and economical conditions, from the time when the pulse of English life beat most strongly on the coasts, and when the growth of trade and manufacture had not yet filled up the central and northern regions. But

the existence of many of the smaller boroughs was due to other reasons. Reference has been made above to the profuse creation of Cornish boroughs. In what is now the Liskeard division of Cornwall, a division which returns one member, there were in 1832 nine boroughs returning eighteen members. In this region, and elsewhere, there were curious little twin boroughs, having no reason for their separate existence except the desire to multiply members. Such were West and East Looe, divided by a river which was spanned by a bridge of fifteen arches. Such also were Weymouth and Melcombe Regis, which were united for administrative purposes, but divided for purposes of parliamentary representation. In the early part of the eighteenth century these were controlled by the notorious borough-monger, Bubb Dodington, who atoned for his many misdeeds by leaving a diary in which they are recorded. Bramber and Steyning were close to each other in Sussex, and part of Bramber was in the centre of Steyning. Each returned two members. In Yorkshire, Aldborough and Boroughbridge were in the same parish, and about half-a-mile apart. The electors of Boroughbridge numbered sixty-five, those of Aldborough about fifty. Each returned two members, at the time when Birmingham was not represented in parliament.

Whilst the selection and distribution of par-

liamentary boroughs was arbitrary, nothing could be more various, confused or uncertain than the parliamentary franchise which they enjoyed. There was no general law regulating the franchise in boroughs. Everything depended on local custom and usage, settled or unsettled by the decisions of parliamentary committees, which turned upon personal and political considerations. The "unreformed" boroughs as they stood before 1832 have been roughly divided into four groups. There were scot and lot and potwalloper boroughs, burgage boroughs, corporation boroughs, and freemen boroughs.

In the scot and lot group the franchise was, in theory, very democratic. Any one who was liable to pay "scot," or local dues, or bear "lot," that is to say, take his share in the burden of local offices, was entitled to the franchise. In later times liability to the poor rate was taken as a general test. At the time of the first Reform Act, Gatton, with 135 inhabitants, was a scot and lot borough. So, at the other end of the population scale, was Westminster. The potwalloper, who is treated as belonging to this group, was an ancient and picturesque person. His very name was a corruption. It was developed out of "potwaller," and that word appears to have been the mistake of a scribe for "potboiler." He was a man who was in a position to boil a pot of his own, and was not dependent for his means on any

one else. On the eve of an election a pot-walloper might be seen spreading his board in front of his hovel, to show that he was entitled to the franchise. In burgage boroughs the right to vote depended on showing title to a house or piece of land by the form of tenure known as burgage tenure. In some cases residence was necessary, and the chimneys, of burgage hovels were carefully preserved, as evidence of the possibility of residence. But the necessary period of residence might be short, and a single night might suffice. Coaches could be seen carrying down qualifying burdens on the eve of the poll. In other cases residence was not necessary, or even possible. At Droitwich the qualification of an elector was being "seised in fee of a small quantity of salt water arising out of a pit." It was proved before a parliamentary committee that the pit had been dried up for more than forty years. But there were title deeds which could be produced by the voter at the poll. At Downton in Wiltshire, one of the burgage tenements was in the middle of a watercourse. At Old Sarum, where ploughed fields gave seven votes which returned two members, there was no building, and a tent had to be erected for the shelter of the returning officer. Title deeds to qualifying property of this kind passed easily and rapidly from hand to hand as occasion required. Hence the class of "snatchpaper" voters. A woman could not

vote herself, but she could pass on her qualification temporarily to any man. At Westbury a widow's qualifying tenement was worth £100 to her in 1747.

For the mode in which an election might be conducted in a burgage borough Sir George Trevelyan's description of the first election of Charles James Fox may suffice. His father and uncle wanted to keep their boys steady, a difficult matter, so they clubbed together to find a borough. For Charles, who was then just nineteen, the two brothers "selected Midhurst, the most comfortable of constituencies from the point of view of a representative; for the right of election rested in a few small holdings, on which no human being resided, distinguished among the pastures and the stubble that surrounded them by a large stone set up on end in the middle of each portion. These burgage tenures, as they were called, had all been bought up by a single proprietor, Viscount Montagu, who, when an election was in prospect, assigned a few of them to his servants, with instructions to nominate the members and then make back the property to their employer. This ceremony was performed in March 1768, and the steward of the estate who acted as the returning officer, declared that Charles James Fox had been duly chosen as one of the burgesses for Midhurst, at a time when that young gentleman was still amusing himself in Italy."

In the "corporation boroughs" or "close boroughs," the right to vote was restricted by charter to the members of what was called the governing body of the borough, a body very different in constitution and functions from the governing bodies created by the Municipal Corporations Act of 1835. They were usually self-elected, they were often non-resident, they were not responsible to any one for the management of municipal affairs, and they existed, not primarily for the good administration of the borough, but as organizations for returning members to the house of commons. In the eighteenth century they mostly fell into the hands of patrons, and, for a suitable consideration, returned the members nominated by their patrons. With the reform of parliament the reason for their existence ceased, and the Act of 1835 followed speedily after the Act of 1832.

The freeman who exercised the parliamentary franchise in the eighteenth century was a different person from the freeman who voted in the thirteenth and fourteenth centuries, and belonged to a more restricted class. Freedom of the borough, membership of the general corporation which constituted the borough, as distinguished from its governing body, might be acquired in various ways—by birth, by marriage, by real or nominal service as apprenticeship to some freeman in his craft or trade, by gift or purchase.

In London, membership of one of the trading companies, the livery companies, was necessary. Where freedom came by marriage, it was practically a dower to the freeman's daughter, and had a very tangible pecuniary value at election times. "I have heard that in former days," wrote a town-clerk of Bristol, "the prospect of an election would bring hesitating or lagging swains to a sense of the desirability of prompt action." There were honorary freemen and non-resident freemen, both having votes. The tendency of parliamentary action was to restrict the class of freemen, for the representation of a borough with numerous freemen was an expensive luxury. On the other hand, it might be convenient to swamp the existing body of electors. At Bristol, in 1812, 1,720 freemen were admitted with a view to an election in the autumn of that year.

Under the electoral system as it worked before 1832 a small number of powerful and wealthy men controlled all the elections. Not that the house of commons was uninfluenced by public opinion. Any great wave of feeling or opinion was sure to reach the house and to produce effects there. The counties were more independent than the boroughs, and the larger boroughs sometimes had views of their own as to the way in which their members should vote. But the number of pocket boroughs, whose members were expected to vote as their patrons

told them, was very large. John Wilson Croker, who knew the house of commons during the first quarter of the last century as well as any one, put the members returned by patrons at 276 out of 658. Before the union with Ireland increased the number of members by 100 the proportion was probably greater, for the number of nomination seats in Ireland did not exceed twenty. It has been estimated that from about 1760 to 1832 nearly one-half of the members of the house of commons owed their seats to patrons. Gladstone once eulogized nomination boroughs as a means of bringing young men of promise into the house, and Bagehot went so far as to describe them as an organ for specialized political thought. But a study of electoral statistics and parliamentary history tends to show that the young men of promise who were given a comparatively free hand were rare, and that the tie between the nominated member and his patron was much less romantic and more prosaic and practical than as conceived by Bagehot. A nominee member was usually expected to obey his patron's orders, and to study his interests. In 1810 a younger brother, who had been put into parliament by his senior, was reprimanded for neglecting the family interests. "As to my being justifiable in thus abandoning the interests of my family, after all the money that has been spent to bring me into parliament," he writes in reply, "I have only to

answer that the money so spent has, I think, been well spent. Your lord lieutenancy and Peter's receiver-generalship have been the consequence. In point of pecuniary advantage to the family the receiver-generalship pays more than the interest on the capital sunk." The seat was a good family investment. For patronship, discreetly used, brought honours and lucrative sinecures. Sir James Lowther returned nine members, the "Lowther ninepins"; he obtained a peerage, and successive steps in the peerage. George Selwyn returned two members for Ludgershall, and was sometimes able to return one of the members for Gloucester. "He was," says Sir George Trevelyan, "at one and the same time Surveyor-General of Crown Lands, which he never surveyed; Registrar of Chancery at Barbadoes, which he never visited; and Surveyor of the Meltings and Clerk of the Irons in the Mint, where he showed himself once a week in order to eat a dinner which he ordered, but for which the nation paid." The payments to constituents, in the form of cash or office, were smaller but more numerous. Posts in the customs and excise were freely used. Bossinney, a little fishing village in the north of Cornwall, was once a borough. When the Act of 1782 disfranchised revenue officers it reduced the voters at Bossinney to a single elector.

If a candidate could not find a patron, or did not wish to be dependent on a patron,

he had to buy a seat. Many of the reformers, men such as Burdett, Romilly and Hume, had to buy their seats. Throughout the eighteenth and the early part of the nineteenth century seats were freely and openly bought and sold. They were even advertised for sale, like livings in the church. The price of seats went up rapidly during the latter half of the eighteenth century, especially when East Indian nabobs entered the market. The government of course took a large share in these transactions, and treasury boroughs were kept for those who were wanted on the treasury bench, or could be counted on to give a safe vote in its neighbourhood. Bargains were struck as to how the cost should be divided between the treasury and the member. "Mr. Legge," wrote Lord North in 1774 to Robinson, his chief election manager, "can afford only £400. If he comes in for Lostwithiel he will cost the public 2,000 guineas. Gascoyne should have the refusal of Tregony if he will pay £1,000, but I do not see why we should bring him in cheaper than any other servant of the crown. If he will not pay, he must give way to Mr. Best or Mr. Peachy." The Whig administration of 1806 adopted a more economical method. They bought seats cheap and sold them dear, and thus saved money for the public. A seat could be bought for a parliament, or hired for a term of years like a country house. Prices varied much, according to place and

time, but between 1812 and 1832 the ordinary price of a seat bought for a parliament is said to have been between £5,000 and £6,000.

Without concrete illustrations such as have been given it is impossible to realize in the twentieth century the working of the electoral system which prevailed one hundred years ago. The details are sordid and unpleasant. But it must be remembered that on these sordid foundations was built a government whose strength and stability won the admiration and envy of Europe. Burke, and the other conservatives of his time, Whig and Tory, had solid reasons for their convictions when they resisted all changes in the electoral system under which they lived. "Our representation," wrote Burke, "has been found perfectly adequate to all the purposes for which a representation of the people can be desired or devised. I defy the enemies of our constitution to show the contrary." It is true that he wrote these words in his later days, under the terrifying influence of the French Revolution, but they represented the views which he had always held about the franchise. According to him, the variety of franchise in the boroughs, and the mode in which the constituencies were controlled, roughly represented the various interests of the nation, and its ruling forces. The king and his ministers had to rule, the discordant elements in the country and the constitution had to be kept together. It was difficult to

see how any form of government could be maintained except by the employment of methods such as have been described above. The ruling class of the eighteenth century were coarse and corrupt, but they were capable and courageous. They made great blunders, they were blind and indifferent to great evils, but they weathered terrible storms.

Into the various causes which brought about the Reform Act of 1832 this is not the place to enter. The generation of statesmen who had carried on the great war had passed away. The governments of the later 'twenties were weak and unstable. The reaction against the excesses of the French Revolution was losing its force. Bentham's principles, which were hostile to a privileged class, and made in the long run for democracy, were being popularized by such men as James Mill and Francis Place. But, above all, there was grave and growing discontent on the part of the middle class with the existing state of things, with their exclusion from political power, and with the practical grievances which, in their opinion, were due to that exclusion. They felt that the house of commons was not in touch with the country at large, that it failed to represent the most vital and growing elements in the nation. The Reform Bill was introduced by Whig aristocrats, but it was the middle class that carried it through.

The Reform Act of 1832 made a radical

change in the system of elections and in the constitution of the house of commons. It redistributed seats, it simplified and rationalized the franchise, it established registers of electors.

The number of seats in the house of commons had been rapidly increased under the Tudors, less rapidly under the Stuarts. Thus Henry VIII created 38 seats, including the Welsh constituencies, and Elizabeth 62. The union with Scotland in 1707 added 45 members, that with Ireland in 1801, 100. In 1832 the total number of members was 658. Five of the English boroughs returned single members. Yorkshire sent four members, having gained two by the disfranchisement of Grampound in 1821. The city of London also sent four members. With these exceptions, each constituency in England returned two members, the number fixed for the earliest English parliaments. Each of the twelve counties and twelve boroughs in Wales returned a single member.

The Act of 1832 materially altered the distribution of seats. It disfranchised in England fifty-six boroughs absolutely, and thirty-one to the extent of depriving each of one member. The seats taken from the boroughs were given to counties and large towns.

The alterations made by the Act in the parliamentary franchise were numerous and important. In the counties it preserved the

old forty-shilling freehold franchise, with some limitations, and it added some new classes of voters. It enfranchised four main classes: (1) the £10 copyholders, (2) the £10 long leaseholders, (3) the £50 short leaseholders, and (4) the £50 occupiers.

Into the boroughs the Act introduced one uniform franchise, the £10 occupation franchise which was in force until 1867. The Act preserved some of the old qualifications, but placed them under restrictions intended to guard against their abuse. Freemen were still entitled to vote, as such, in certain boroughs. But the old qualifications had in most cases been made unimportant by the extension of the occupation franchise.

Finally, the Act introduced the machinery of parliamentary registration, substantially on its existing lines. Since 1832 a qualification to vote entitles a man to be placed on the register, not to vote. Unless he is on the register he is not entitled to vote. If he is on the register he is presumably entitled to vote.

Separate Reform Acts for Scotland and Ireland, framed on the same general lines as the English Act, were passed in the same year. They gave three additional members to Scotland, and three to Ireland, but the total number of seats for the United Kingdom was not altered.

The Reform Act of 1832 did not realize the hopes of its friends or the fears of its foes.

Like most English Acts, it was based on compromise, not on abstract principle. Its objects were to remedy the most obvious grievances, to remove the most glaring anomalies and abuses. In dealing with distribution, it did not parcel out the country into equal, or approximately equal, electoral districts. It merely shifted seats, with some regard to the population and character of the places to be represented. It preserved old franchises, and superimposed new franchises upon them. It did not introduce and was not intended to introduce, democracy. It gave electoral power, in the counties, to the landholders with a few large farmers; in the towns, to the great middle class. The borough electorate in England and Wales was increased by about 100,000. There was no finality about the Act. It was a step forward, suggesting further steps at a later date. It did not put an end to bribery, corruption, or the exercise of undue influence. But the opportunities for these practices were made fewer and less easy, and the practices became less flagrant and universal.

Thus the Act of 1832 was not the product of, and did not effect, a revolution. But its importance, political, social and economical, cannot be exaggerated. It was one of the great landmarks of English history.

The reformed house of commons reflected the virtues of the middle class, and their weaknesses. The influence of the middle

class preponderated, as under the contemporary bourgeois rule of Louis Philippe. But Louis Philippe's regime died of corruption and stagnation in 1848, whilst the English chartism of that year shook neither parliament nor the throne. For the British parliament had justified its existence in its renovated form, and had accomplished some great things. It had reformed the poor law; it had reformed municipal government; it had reformed the fiscal system.

It is in the sphere of legislation that the difference between the unreformed and the reformed house of commons is most marked. It is impossible to emphasize too strongly the enormous change which the Reform Act of 1832 introduced into the character of English legislation, or the complete contrast between the legislation which preceded and the legislation which followed that date. The eighteenth century and the first two decades of the nineteenth century were prolific of legislation, but it was of an ephemeral character. The parliament of the eighteenth century passed many laws which would now be classed as local Acts, for authorizing the construction of roads, canals and bridges, and was never tired of regulating, after its lights, the conditions of labor, the conduct of trades and industries, and the relief of the poor. But it created no new institutions. It is from the Reform Act that date the series of Acts which began with remodelling

the poor law and municipal corporations, and which have completely altered the framework of our central and local government. And from the same time dates that special responsibility of the government for legislation which is now so marked a feature of the parliament at Westminster. Sir Charles Wood, afterwards Lord Halifax, first took his seat in the house of commons in 1828, and, when talking to Mr. Nassau Senior in 1855, he dwelt on the changed attitude of the government towards legislation. "When I was first in parliament," he said, "twenty-seven years ago, the functions of the government were chiefly executive. Changes in our laws were proposed by independent members, and carried, not as party questions, by their combined action on both sides. Now, when an independent member brings forward a subject, it is not to propose himself a measure, but to call to it the attention of the government. All the house joins in declaring that the present state of the law is abominable, and in requiring the government to provide a remedy. As soon as the government has obeyed, and proposed one, they all oppose it. Our defects as legislators, which is not our business, damage us as administrators, which is our business." This was a natural expression to fall from the lips of an experienced statesman who had lived through the change, and had not quite lost the habit of mind which preceded it. And one still

hears from private members regrets for the time when their predecessors enjoyed greater freedom of legislative action, and denunciations of government encroachments on their legislative opportunities. But the change was inevitable. The great demand for new laws, especially laws which create, remodel, and regulate administrative machinery, and the importance, difficulty, and complexity of the legislative measures required, necessarily lessen the share of the private member in the initiation and passing of laws, and increase the responsibility of the government for the work of legislation.

The great outburst of parliamentary activity immediately after 1832 was naturally followed by a reaction, and there were periods of failure and inactivity, legislative and administrative. Walter Bagehot has given an inimitable description of the Palmerstonian house of commons, as it stood in the years 1865 and 1866. No one could hit off more neatly the habits and ways of that house or was more fully aware that its leader, who had been in political harness long before 1832, represented traditions of government which were passing away, and ought to pass away. Palmerston in his later years opposed a steady and usually an effective resistance to all changes, and his last ministry, from 1859 to 1866, was a period of exceptional barrenness in legislation. But when, after 1867, Bagehot wrote the preface to the second edition of

his book on the English Constitution, it is evident that he had serious misgivings about the effect of that Act, and one suspects that he looked back to the Palmerstonian period as the golden age of what was, in his opinion, the best of all governments, a safe, sober, cautious middle-class government.

The Reform Act of 1832 had shown the possibility of making changes in an electoral system which was venerable, and was venerated, by reason of its antiquity. It suggested and paved the way for further changes. There was, as has been said above, no finality in its provisions. The forty-shilling freeholder came down from the middle ages. But there was nothing venerable or sacrosanct about the £50 leaseholder or the £10 occupier. If £10, why not some other figure?

Disraeli was the first minister who was bold enough to propose dispensing with all tests of rental or rating, and to offer the borough franchise to householders as such. The history of the Representation of the People Act, 1867, is well known, and its inner side was revealed many years ago in Lord Malmesbury's indiscreet *Memoirs of an Ex-Minister*. The bill of 1867, as introduced, while conferring the household franchise, surrounded it with safeguards. The householder was required to have resided for two years, and to have paid his rates personally. A householder paying twenty shillings in direct taxation was to have a sec-

ond vote, and there were some special franchises as in previous bills. But the government which introduced the bill was in a minority in the house of commons, and all these safeguards disappeared in committee. The period of residence was reduced to one year. The second vote and the fancy franchises disappeared. After a long battle over the "compound householder," the man whose rates are paid for him by his landlord, compounding was abolished, and all householders were to be rated in person. But this was found so inconvenient that, two years later, compounding was restored, and personal payment of rates ceased to be a necessary qualification for being registered as a voter. Lastly, £10 lodgers were admitted to the vote. Thus the measure was completely transformed, and it has been estimated that the number of persons enfranchised was increased from about 100,000 to about two millions. These were the changes made by the Act of 1867 in the borough franchise. Those which it made in the county franchise were less important. It reduced the £10 qualification for copyholders and leaseholders to £5. And it added a £12 rateable occupation franchise which practically took the place of the £50 rental franchise.

The Act of 1867 enfranchised the urban working man as the Act of 1832 had enfranchised the mainly urban middle class. Its effects made themselves apparent, spe-

cially in the changed attitude of the legislature towards trade unions, and generally in the great outburst of legislative activity during Gladstone's first ministry, a period as fertile in legislation as the period immediately preceding 1867 had been barren.

Among the Acts passed during that ministry was the Ballot Act, 1872, which introduced into parliamentary elections the system of election by secret ballot. Vote by ballot had been one of the famous "six points" of the Charter of 1848, and proposals for establishing it had been annually introduced by private members, but, before the ministry of 1869, had never been supported or proposed by the government. The Act was not passed without a long and hard fight, and then only as an experimental measure, to remain in force for one year only, unless renewed. It has been renewed annually ever since by the Expiring Laws Continuance Act of each year, but curiously enough, though it was passed nearly forty years ago, and though its lapse would throw the whole law of elections into confusion, it has not even yet found its place on the statute book as a permanent measure. It put an end to the venerable ceremonies of election at the old county court—a very different institution from the modern judicial county court—and, incidentally, by altering the form of the writ for elections, removed the distinction between knights, citizens and burgesses, grouping them all as "members."

The last stage in the history of the reform of parliamentary elections is marked by the Representation of the People Act, 1884, and by the Act for the Redistribution of Seats which followed in 1885. The Act of 1884 is in form clumsy and difficult to understand, but its effect is very simple. It extended to the counties the household and lodger franchise which the Act of 1867 had conferred on the boroughs. It also remodelled the occupation qualification, making the occupation of any land or tenement of a clear yearly value of £10 a qualification both in boroughs and in counties. And it created a new form of franchise, called the service franchise, intended to meet some cases not quite covered by the householder or the lodger vote. The Act increased the electorate by forty per cent, and its most important effect was the enfranchisement of the rural working man. The Act of 1867 had given the vote to the working man in the town. The Act of 1884 gave it to the working man in the country, the agricultural labourer and his like. It was soon afterwards that the famous "three acres and a cow" made their appearance on the parliamentary scene.

The house of lords refused to pass the Act of 1884 unless it was accompanied by a measure for the redistribution of seats. The difference between the two houses was ended by a compromise, in pursuance of which, after an adjournment, a bill was brought in which

became law as the Redistribution of Seats Act of 1885. The terms of the bill were settled, during the adjournment, by an arrangement between the chiefs of the two parties, and so numerous and conflicting were the interests involved that without some such agreement the bill could not have become law.

The Act of 1885, though to some extent a compromise, was drawn on bolder lines than its predecessors, and was based on the general principle of equal electoral districts each returning a single member. The proportion of one seat for every 54,000 people was roughly taken as the basis of representation. In order to adapt this principle to the then existing system with the least possible change, boroughs with less than 15,000 inhabitants were disfranchised altogether, and became, for electoral purposes, a part of the county in which they were situated. Boroughs with more than 15,000 and less than 50,000 inhabitants were allowed to retain, or if previously unrepresented, were given, one member each: those with more than 50,000 and less than 165,000, two members; those above 165,000, three members, with an additional member for every 50,000 people more. The same general principle was followed in the counties.

The boroughs which had previously elected two members, and retained that number, remained single constituencies for the election

of those two members. Of these boroughs there are now twenty-three, and these, with the city of London, and the three universities of Oxford, Cambridge and Dublin, make the twenty-seven cases of constituencies returning two members. All the other constituencies are single member districts, a result which was brought about by a partition of the counties, of boroughs with more than two members, and of the new boroughs with only two members into separate electoral divisions, each with its own distinctive name.

The total number of members was increased from 658 to 670, the number at which it now stands.

The conditions of the franchise, and the distribution of seats, remain to-day as they were fixed in 1884 and 1885. As to the franchise, there is still a property qualification, but the most important franchises are the three forms of occupation franchise: (1) the qualification of the occupier of a dwelling-house, (2) that of the occupier as lodger of lodgings of the yearly value of £10, (3) that of the occupier of any land or tenement of the yearly value of £10. Such a wide meaning has been given to the expression householder that it is often difficult for the revising barristers and the courts to distinguish between householders and lodgers.

Throughout the history of parliament the right to vote has not been personal but

has, as a rule, depended on the ownership or occupation of land or a dwelling-place. That principle, with some exceptions, such as graduates and freemen, still remains. As to the distribution of seats, the Act of 1885 made a departure from the principle of local representation, and approximated to the principle of electoral districts with equal population. The ancient idea of the representation of communities, or organized bodies of men has thus given way to that of representation of a number of men, grouped only for the purpose of election.

During the last quarter of a century there has been no change in the electoral system.

For a general extension of the franchise, an extension from the occupation franchise to the adult franchise, there does not appear to be any demand, except in connection with the burning question of the franchise for women. We are already much nearer manhood suffrage than is often supposed. According to Mr. Lawrence Lowell's calculations the ratio of electors to population is about one in six, whereas the normal proportion of males above the age of twenty-one, making no allowance for paupers, criminals, and other persons disqualified by the law of most countries, is somewhat less than one in four. But the demand for the enfranchisement of women has raised the general question as to the principle on which the franchise should be based, for the advocates of the women's

vote appear to be divided into two camps, those who would grant it on the existing basis of property or occupation, and those who fear that an extension on these terms would unduly increase the influence of property and who would postpone the extension until adult suffrage is granted.

For alteration of the distribution of seats, of the incidents of the franchise, and of the conduct of elections, there have been many demands in parliament and elsewhere.

The distribution of population has greatly changed since 1885 and a strong case can be made out for a better adjustment of seats to the existing distribution. Mr. Balfour's government, on the eve of their fall in 1905, submitted preliminary resolutions for this purpose. The question is always being kept to the front, under the catchword phrase "one vote, one value," but there are many difficulties in the way of dealing with it, Ireland in particular. On the mere numerical basis Ireland is much over represented, but Ireland claims to be treated as a separate entity, and her claims cannot be disregarded.

The phrase "one vote, one value," was invented as a counterpoise to the earlier demand for "one man, one vote." Under the ownership and occupation franchises a man can have separate votes for different constituencies, and may have more than one vote for residential qualifications. This plural

vote is at variance with the electoral practice of most foreign countries, and of most parts of the British empire, and many attempts have been made to abolish it. A bill for this purpose was passed by the commons in 1906, but was thrown out by the lords.

Among other changes demanded in various quarters are the reduction of the expenses incident to elections, by holding all elections on one day, and by simplifying and cheapening the machinery of registration; the modification of the condition of residence so as to prevent the disfranchisement of those who are compelled, for business or other reasons, to shift their residence; and the removal of the disqualification attached to the receipt of poor law relief, a disqualification which has already been mitigated in various ways. The payment of members, and of the official expenses of candidates, was promised on the eve of the dissolution of the short parliament of 1910, and proposals for authorizing it were then in preparation.

A far more sweeping change would be effected if the advocates of proportional representation had their way. The devising of some means for the protection of minorities against the "tyranny of majorities" has occupied the attention of political thinkers for many generations, and John Stuart Mill, in 1867, urged in parliament the adoption of Thomas Hare's well-known scheme, but his arguments met with a frigid reception.

No better was the fortune of Mr. Leonard Courtney, now Lord Courtney of Penwith, in 1884. The three-cornered constituencies which were introduced in 1867 at the instance of the house of lords, and which aimed at securing the return of candidates who could secure the support of one-third of the voters in their constituency, perished in 1885, and the Act of that year established the general principle of single-member constituencies. The cumulative vote for English school boards, introduced in 1870, went with the school boards themselves in 1902. The experience of Belgium, and the experiments which are being tried in Tasmania, South Africa and elsewhere, have revived interest in the question, and the whole subject was carefully considered by a royal commission which reported in 1910. Proposals for proportional representation have obtained the support of many men of eminence and ability, but do not appear to have yet aroused any general interest either in parliament or in the country.

A word or two may be said in conclusion on the qualifications of members as distinguished from voters. A residential qualification was imposed in the fifteenth century but soon became obsolete, and was formally repealed, as such, in the eighteenth century. By the legislation of that century a property qualification was required, but it was easily evaded, and was abolished by a private

member's Act in 1858. No test is required to make the entry of poor men into parliament difficult. Oaths of allegiance and oaths imposing religious tests in various forms and degrees of stringency were introduced in the sixteenth and seventeenth centuries; and their modification and abolition, and the steps by which Roman Catholics, Jews and others, obtained admission into the house of commons, form an interesting chapter in parliamentary history. All that is now required is a very simple oath or affirmation of allegiance, in a form compatible with any variety or shade of religious belief or unbelief.

The existing constitution of the house of commons may be summed up as follows.

The house consists of 670 members, 465 for England, 30 for Wales, 72 for Scotland, and 103 for Ireland. Single member constituencies are the general rule, but in a few cases one constituency returns two members. Every male householder who has resided in his constituency for a year, and has paid or compounded for his rates, is entitled to be registered, and, when registered, to vote as a parliamentary elector for that constituency. This is the most general franchise, but there are others, including the occupation of lodgings rented at £10 a year, and the ownership or occupation of lands or buildings of a certain value. Some of the universities return members, elected by their graduates. Women are not entitled to the parliamentary fran-

chise. Subject to disqualifications arising from peerage, holding of office, bankruptcy, and conviction of treason or felony, every British subject who is of full age is eligible to the house of commons. A peer of the United Kingdom or of Scotland is not eligible, but a peer of Ireland, unless he be a representative peer, is eligible for any but an Irish seat. For instance, Lord Palmerston was an Irish peer. Where a member of the house of commons is described as a lord, he is either an Irish peer, or, more frequently, a commoner holding a courtesy title as son of a peer.

The evidence of election is the return sent to the crown office by the returning officer at the election. If the validity of an election is disputed, the question is tried and decided by election judges appointed by, and from among members of, the high court. A member must, before sitting or voting as such, except in the election of Speaker, take the oath of allegiance, or make an affirmation to the same effect.

About disqualification by office something more must be said. After the restoration of Charles II, and indeed until the end of the seventeenth century, there was much jealousy of the presence in parliament of persons holding office under the king. It was feared that, through his officers, the king would be able to exercise undue influence over parliamentary proceedings, and an Act was passed which made the holding of all

such offices incompatible with a seat in the house of commons. Fortunately this Act was repealed before it came into operation; if it had remained law it would have made our present system of government impossible. The present state of the law depends on a series of complicated enactments, but its general effect is that some offices cannot be held by a member of the house of commons, whilst in other cases acceptance of the office by a member vacates his seat, and compels him to seek re-election, but, if he is re-elected, he can hold both the office and the seat together. The offices which cannot be held by a member of parliament include those of the higher judges, and those of the members of what is known as the permanent civil service, who retain their posts independently of any change in the government. The offices which involve re-election are the so-called political offices which are held by the ministers of the crown, who represent in the house the government of the day, and who resign their offices when there is a change of government owing to another party coming into power. Under the provisions of various statutes an exchange of one of these offices for another is an exception from the rule which vacates a member's seat when he accepts the office of a minister. Thus if the president of the board of trade become home secretary he does not thereby vacate his seat and require re-election. Nor does appointment to the

post of parliamentary under-secretary to a secretary of State, or to such departments as the board of admiralty, board of trade, or Local Government Board vacate a seat, the technical reason being that these appointments are made, not by the king himself, but by the minister under whom the parliamentary secretary serves, and therefore the posts are not "offices under the Crown" within the meaning of the disqualifying statutes.

A member cannot resign his seat, but, if he wishes to retire from parliament, he takes advantage of these disqualifying statutes by asking for appointment to some old office to which nominal duties and emoluments are attached, and which he resigns as soon as his acceptance of it has made his seat vacant. The office usually selected for this purpose is that of steward or bailiff of His Majesty's three Chiltern Hundreds of Stoke, Desborough and Burnham, in the county of Bucks. Acceptance of the Chiltern Hundreds is the door by which a member escapes when he wishes to retire from parliament before a general election.

CHAPTER III

THE MAKING OF LAWS

THE business of the house of commons may be divided into three branches, legislative, financial, critical. The house makes laws with the concurrence of the house of lords and the king. It grants money for the public service, specifies the purposes to which that money is to be appropriated, imposes taxes and authorizes loans. By means of questions and discussions, it criticizes and controls the action of the king's ministers, and of the executive government of which they are at the head.

Let us begin with the work of making laws. The law of this country is commonly classified as falling under two heads, the common law and the statute law. The common law may for present purposes be described as the law which is based on custom and usage as declared and expounded by judges. The statute law is the law which is made by the legislature and is to be found in Acts of Parliament, or, as they are also called, the statutes of the realm. There are other distinctions and refinements with which we need not concern

ourselves here. It is with the making of statute law that parliament is concerned. The gradual change in the form of parliamentary legislation, by which legislation on petition was transformed into legislation by bill, has been described in an earlier chapter.

In dealing with the work of legislation, as conducted under modern rules of procedure, it may be convenient to begin by describing, very briefly, the stages through which a bill, that is, a project of law, or a proposed law, must pass before it obtains the king's assent, becomes an Act of Parliament, and acquires the force of law. We will suppose that it is a public bill, that is, a bill for the alteration of the general law, as distinguished from a private bill, the nature of which will be explained later on, and that it makes its start in the house of commons, not in the house of lords.

Any member of the house of commons may introduce a bill into that house, or move the house for leave to introduce it. Until recently this motion for leave, which was rarely refused, was the preliminary step for introduction of a bill, and the old practice is still usually followed in the case of the more important measures introduced by the government, and sometimes in the case of bills introduced by private members. But, under an alteration of rules made in 1902, any member may now present a bill, after giving formal notice of his intention to do so. If he has obtained

the requisite leave, or given the requisite notice, the Speaker, at the proper time, calls his name, and thus invites him to present his bill. He does so by bringing to the table of the house, where the clerks sit, a document which is supposed to be his bill, but which is really a "dummy" or sheet of paper, supplied to him at the public bill office, and containing the title of the bill, the member's name, and the names of any other members who wish to appear as supporting him or joining with him in presenting the bill. The clerk at the table reads out the title of the bill, and it is then supposed to have been read a first time. A formal order is made for printing it, and a day is fixed for its second reading. There was a time when these so-called "readings" were realities. The Speaker would explain from notes or a "breviate" supplied to him the general nature of the proposals to be brought before the house, and the bill itself would probably be read in full, at later stages, by the clerk at the table of the house. Nowadays the "readings" are merely stages in the progress of a bill through the house. The first reading is a mere formality. When the question is put that the bill be read a second time an opportunity is afforded for discussing its general principles as distinguished from its details. If the house signifies its approval of these principles the bill is supposed to be read a second time, and then follows what is called the committee

stage. Under the present rules, when a bill has been read a second time it is sent to one of the standing committees on bills, unless it falls under certain exceptions, or the house makes an order that it be considered by some other kind of committee.

There are four of these standing committees. One of them is for the consideration of public bills relating exclusively to Scotland, and must include all the members representing Scottish constituencies. The other three are constituted by the committee of selection, which is one of the committees appointed for each session by the house, and the same committee of selection also reinforces the committee on Scottish bills by adding to it some other members. The minimum number of each standing committee is sixty, and the quorum for business is twenty.

If a bill does not go to a standing committee, it usually goes to what is called a committee of the whole house, but is really the house itself, transacting its business in a less formal manner, with the Speaker's chair vacant, and sitting under the presidency of a chairman, who occupies the chair at the table which is occupied by the clerk of the house when the Speaker is present. These so-called committees of the whole house, corresponding to what are called "committees of the whole" in the United States, came into existence at the beginning of the seventeenth century. The more important bills were

then sent to large committees, and as it was difficult to obtain attendance at these committees, orders were often made that any member who wished might attend. These orders grew into a general practice. It is said also that the house of that day did not place complete confidence in its Speaker, whom it regarded as the agent and nominee of the king, and that it preferred to conduct its deliberations in his absence. So it came to pass that what is called a committee of the whole house is the same body of persons as the house itself, sitting in the same place, with slightly different formalities and procedure.

Before a recent change in the rules, all bills went after second reading to a committee of the whole house, unless the house ordered otherwise. Now the presumption is reversed, and all bills, except a special class, go to a standing committee unless the house orders otherwise. But the Finance Bill and other money bills of the year must go to a committee of the whole house, and opposition is always made when it is proposed to send to a standing committee any of the more important bills or any very controversial bill, for, notwithstanding the recent change of rules, many members hold that every member of the house ought to have an opportunity of taking part in the discussion of the detailed provisions of these bills.

When a bill is before a standing committee

or a committee of the whole house, the committee goes through the bill, clause by clause, discussing any amendments that may be proposed, determining as to each clause, how, if at all, it should be amended, and whether in its original or amended form it should stand part of the bill, and then whether any new clauses should be added. In the case of important and controversial bills these debates may last over many days or weeks, and the notices of amendments to be proposed fill many pages of the parliamentary notice papers. When the discussion is finished, and the whole bill has been gone through, the chairman of the committee makes a simple report to the Speaker, merely stating whether the bill has been amended or not.

In some cases a bill, instead of going to a standing committee or to a committee of the whole house, is sent to a small select committee, or to a joint committee of both houses. These cases are comparatively rare, and the reason for adopting this course usually is that it is desired to summon witnesses and take evidence as to the expediency and effect of the provisions of the bill. Committees of this kind usually make special reports, stating their reasons and conclusions, but bills considered by them have to be considered subsequently by a committee of the whole house.

After the committee stage follows the re-

port stage. The house, sitting formally with the Speaker in the chair, considers the bill as reported to it by the committee, and discusses and determines whether any further alterations or additions should be made.

The final stage in the house of commons is the third reading. At this stage only formal or verbal alterations are allowed. What the house does is to consider the bill as a whole, and determine whether, in its opinion, the measure ought or ought not to become law.

When a bill has passed through all its stages in the house of commons it is sent up with a message to the house of lords, to pass through its several stages there, stages which correspond, with some differences of detail, to those in the house of commons. The lords may reject the bill or may amend it, but, as will be explained hereafter, they have no power to amend a finance or other money bill. If the lords amend a bill they send it back to the commons with a message requesting the concurrence of the commons in their amendments. Should the two houses differ, informal negotiations take place between the friends and the opponents or critics of the bill, and amendments and counter amendments may pass to and fro between the two houses until an agreement is arrived at. But if no agreement can be arranged, the bill drops, that is to say, fails to become law, for a bill cannot be presented for the royal as-

sent until the concurrence of both houses has been obtained. The life of a bill is for one session only. If a bill is not either passed or withdrawn by its promoters before the end of the session, it lapses or becomes a dead letter, and if the proposals are to be proceeded with in the next or a subsequent session, a new bill must be introduced.

When a bill has been passed by both houses the final stage is the royal assent. The assent is given periodically to batches of bills, as they are passed, the largest batch being usually at the end of the session. The ceremonial observed dates from Plantagenet times, and takes place in the house of lords. The king is represented by lords commissioners, who sit in front of the throne, on a row of armchairs, arrayed in scarlet robes and little cocked hats. Sometimes a few peers in ordinary clothes are to be seen on the benches, sometimes there are none. At the bar of the house stands the Speaker of the house of commons, who has been summoned from that house. Behind him stand such members of the house of commons as have followed him through the lobbies. A clerk of the house of lords reads out, in a sonorous voice, the commission which authorizes the assent to be given. The clerk of the crown at one side of the table reads out the title of each bill. The clerk of the parliaments on the other side, making profound obeisances, pronounces the Norman-French formula by which the king's

assent is signified; "Little Peddlington Electricity Supply Act. Le Roy le veult." Between the two voices six centuries lie.

Since the time of Queen Anne no English king or queen has ever refused assent to a bill. For, under the modern constitutional rule, the king must, in matters such as this, act in accordance with the advice of his ministers, and his ministers can practically prevent any bills which, in their opinion, ought not to become law from reaching the stage at which the king's assent is required.

A bill cannot be introduced except by a member of parliament, and, as has been seen, any member can introduce a bill. When a minister of the crown introduces a bill, he does so, not as a minister, but as a member of the house to which he belongs. There is no difference in form between a government bill and a private member's bill, between a bill introduced by a member of the government and a bill introduced by any other member. But the chances of the bill being passed into law are very different in the two cases. A private member's bill has little chance of becoming law unless it relates to some comparatively unimportant or uncontroversial subject. When a private member undertakes legislation on his own account he finds himself handicapped in many ways. He has difficulty in obtaining expert assistance in the preparation of his bill. He has difficulty in finding parliamentary time for its discussion. Even

if he does find the time, he has difficulty in commanding and organizing forces sufficient to overcome parliamentary opposition. In all these respects the government, as compared with the private member, enjoys great advantages. It has at its disposal a staff of experts for the preparation of bills, and for the collecting and sifting of information on all points relating to the subject-matter of the bill. It has also command of parliamentary time. During the earlier part of each session, Fridays are set apart for private members' bills, and members who wish to introduce bills draw lots for precedence on those Fridays. Unless a private member's bill is so simple and uncontroversial as to meet with no opposition from any quarter, and so manages to slip through by consent, his only chance of getting it read a second time depends on his securing an early place on some Friday; and unless that Friday falls early in the session, the probability of the bill making further progress is small. But the government have at their disposal the greater part of the time available for parliamentary discussions, and can use all the machinery of party organization and party discipline for pushing their measures through. Hence it is not a matter for surprise that, although private members' bills largely outnumber government bills, the proportion of them which become law is, by comparison, extremely small.

It is on the government, then, that by far

the greatest share of responsibility for parliamentary legislation devolves; it is the government that prepares, introduces, and steers through parliament all the more important legislative proposals which find their place as laws on the statute book. To say that at present the cabinet legislates with the advice and consent of parliament would, as has been remarked by a distinguished American writer, hardly be an exaggeration. The private member often complains that his share in the work of legislation has been unduly curtailed. He may perhaps derive some consolation from the reflection that modern practice gives effect, though by different methods, to the old parliamentary formula of enactment. According to that formula it is the king who enacts laws with the advice and consent of parliament. According to modern practice it is the king's ministers that initiate and are mainly responsible for shaping all the more important measures of legislation. The ministry, who represent the executive government, cannot, as such, determine whether any legislative measure should or should not be introduced, or should or should not be passed, but they have, through their control over the business arrangements of the house of commons, much to say as to the chances of any given measure becoming law. And though they cannot dictate the ultimate form which a bill is to assume, they can, by suggestion or persuasion, do much to determine that form.

The possible course of parliamentary legislation may be illustrated by taking some imaginary government measure and tracing its progress from its earliest stage to its conclusion. Suppose that the cabinet, at one of their November meetings, decide to introduce a comprehensive measure of poor law reform, and to make it a leading feature in their legislative programme for the next year. The first step will be to give instructions to the government draftsman to prepare a bill. There are two government draftsmen, bearing the official title of parliamentary counsel. They are attached to the treasury, as the central department of the government, and all their instructions come to them through the treasury. These instructions are usually very general in the first instance, and it is by means of personal conferences and discussions that the scheme of the bill is gradually worked out. The measure may be referred to a committee of the cabinet, who will assist the minister in charge of the bill in considering questions of principle. The first crude sketch will be gradually elaborated. The draftsman will have daily conferences with the minister, or with the permanent head of the department concerned, or with both. There will be interviews and correspondence with experts in various branches of the subject with which the measure deals. A mass of blue books will have to be grappled with. Notes will be written tracing the history of previous

legislation or attempted legislation, explaining the reasons for and effect of the several proposals embodied in the draft bill, and these will soon grow into a formidable literature of commentaries. Thus the measure will probably have gone through a long period of gestation before its introduction into parliament.

Information and opinions on different points will have been confidentially obtained from various quarters; the provisions of the measure will have assumed many varying forms, and the alternatives will have been carefully discussed and compared. Yet, in spite of these precautions, as soon as the measure has been printed and circulated, swarms of amendments will begin to settle down on the notice paper like clouds of mosquitoes. The minister in charge of the bill has to scrutinize all these, with the help of his permanent staff and of the draftsman, to formulate reasons for their acceptance or rejection, and to prepare replies to, or amendments for meeting, the numerous points raised since the introduction of the bill. Letters and articles appear in the newspapers. Questions are asked in the house. Correspondence pours in from all parts of the country. The peculiar circumstances of the parish of Ockley-cum-Withypool must surely have been overlooked by the framers of the bill. There is a local Act which will require consideration. Above all, there are the

vested interests. Journalists may write eloquent leaders, members of parliament may make sonorous speeches about the effect which the measure will have in promoting the welfare or undermining the institutions of the country. But to the parish beadle of Little Peddlington the question of supreme importance is how it will affect his emoluments, existing and prospective. It is with reference to them that he studies the parliamentary debates, indites missives to his representative, and organizes deputations to departments. Every member of parliament knows this beadle, under various names.

Questions of this kind occupy all the working time during the interval between the second reading and committee, and during the progress of the committee stage. Inside the house the minister is battling with amendments, some from enemies anxious to make the bill unworkable or to reduce its operations to a minimum, others from indiscreet friends. Amendments are often framed hastily, without reference to grammar, logic, consistency, or intelligibility. They are apt to be crowded in at the beginning of each clause or sentence, with the view of obtaining precedence in discussion. The language of a law ought to be precise, accurate, and consistent, but the atmosphere of a crowded or heated assembly is not conducive to nicety or accuracy of expression. Decisions often have to be taken on the spur of the moment, and in view of the pos-

sibility of a snap division. At last the amendments are cleared off the paper; the new clauses, often raising the same questions, are disposed of; and the much-buffeted craft, with tattered sails, the deck encumbered with wreckage, and with several ugly leaks in her hold, labours heavily into a temporary harbour of refuge. There is a short interval for the necessary repairs, and then the struggle begins again at the report stage. There may or may not be a sufficient opportunity for making such formal amendments as are necessary to make the measure decently consistent and intelligible. If not, they must be left for the house of lords.

This is no unfair description of the methods of parliamentary legislation, and it is no marvel that both the methods and the results have been severely criticized. But the countervailing considerations have to be borne in mind.

Popular legislation has its defects, but it has its advantages also, and in the English view the advantages preponderate. It is true that the provisions of a bill as introduced into parliament ought to be, and often are, perspicuous, consistent, orderly, and luminous, and that their perspicuity is often marred, the principle of their arrangement upset, their consistency disturbed, by amendments in committee. On the other hand, the substantial improvements which are effected often do more than atone for any deterioration in form.

The searching ordeal to which bills are exposed in their passage through parliament frequently brings out defects and omissions against which the most skilful draftsman could not be expected to provide, which the most omniscient official could not be expected to foresee.

And the opportunities which the existing procedure and practice afford for the avoidance of ill-considered, ill-drawn, or inconsistent amendments, and for the removal or formal defects, are greater than are realized by those who are not familiar with parliamentary habits.

At first sight nothing would seem more preposterous than to submit a complicated draft for criticism and correction to a miscellaneous assembly of 670 persons. But if the member in charge of a bill is a minister with a compact and strong following at his back, and if he has the qualities which command the confidence and respect of the house, he can retain control over both the form and the substance of his bill through all the vicissitudes of a discussion in committee.

It is true that the qualities required for the successful steering of a complicated and controversial bill through committee are qualities of a very high order. They include tact, readiness, resourcefulness, firmness, and, above all, patience and good temper. The slightest appearance of dictation, the slightest loss of temper, will often set the house aflame.

But if the minister can be conciliatory without "wobbling," can distinguish between amendments which are fatal to his scheme and those which are not, can by a happy and timely suggestion indicate the way out of a confusing discussion, and can suppress his own impatience until it is shared by the committee, he can, without going to a division, often persuade his critics either to withdraw, or to modify, or to postpone their amendments, or, at the worst, make his assent to their acceptance subject to further consideration at a later stage of the bill.

Qualities of this kind are not rare amongst English statesmen, and are developed by parliamentary training. Those who have been in the habit of attending legislative discussions, whether in committee of the whole house or in any of the standing committees, cannot fail to have been struck by their display, and to have been also impressed by the good sense, good temper, and readiness to adopt compromises and accept reasonable assurances which characterize a committee, except when it has got "out of hand."

The "report" stage of a bill supplies an opportunity for setting right things which have gone wrong in committee, and amendments which cannot be made at the report stage can often be made in the house of lords, which thus discharges to some extent the functions of a revising authority.

The foregoing description applies to public

bill legislation, the legislation resulting in the Acts of Parliament which alter the general law of the country. Private bill legislation is governed by different rules, and follows a different course of procedure.

The object of a private bill is, not to alter the general law of the country, but to alter the law relating to some particular locality, or to confer rights on or relieve from liability some particular person or persons. When private bills become law they are classified as local and private Acts, and the table of local and private Acts, which is to be found in the annual volume of statutes, indicates the nature of the subjects with which they deal. For instance, they include measures for conferring further powers on particular local authorities, or for altering their constitution, and for constituting, or extending the powers of, railway companies, gas and electricity companies, water companies, and the like.

An ordinary railway bill may be treated as presenting the type of a private bill. The introduction of a private bill must be preceded by certain notices the object of which is to supply information to persons whose private interests are likely to be affected by the proposals of the bill, such as persons whose land it is proposed to take for an undertaking which is to be authorized. In many cases plans and sections, showing the nature of the work proposed, and estimates of the expendi-

ture proposed, have also to be deposited before particular dates, and in particular places specified by the standing orders of the two houses of parliament. Detailed provision for all these matters is made by the standing orders, and there are officers who are charged with the duty of seeing that the requirements of these standing orders have been complied with before a private bill is introduced into either house. If these requirements have been complied with, the bill may be presented and read a first time, and it is for the house to say, as in the case of a public bill, whether it shall be read a second time or not. As a rule the second reading of a private bill is not refused except on the ground that it raises some question of general principle which ought to be decided before the bill is allowed to go further. If it is read a second time it is referred to a small committee, usually of four members. Every private bill has a preamble stating the reasons for which recourse to this form of legislation is considered expedient, and the first business of the committee is to consider whether, in their opinion, the preamble is proved—in other words, whether there is a sufficient case for legislation. If they are satisfied on this point they go through the clauses of the bill, make such amendments as they think desirable, and report the bill to the house. The proceedings of the committee are of a judicial nature, and, both on the preamble, and on the clauses and the

proposed amendments, they hear the arguments of counsel, take evidence from witnesses, and consider reports from public departments. In fact their work, though in form legislative, would in many other countries be considered administrative and would be dealt with, on administrative principles, by some department of the executive government.

When a private bill has been reported by a committee to the house, the report has to be considered by the house, and the bill has to be read a third time and passed, as in the case of a public bill. But here again, opposition is rare except on some grounds of general principle. The practice and usage of each house of parliament is to consider that the questions raised by private bills can be more satisfactorily settled by a small special committee than by a large assembly.

Private bill legislation is expensive. The fees payable under the standing orders of each house are high, and still higher are the charges of parliamentary counsel and parliamentary agents. But the tendency of this legislation is to decrease in volume and importance. General Acts, such as the Public Health Act of 1875 and its successors, have superseded many of the provisions which used to be inserted in special Acts, and many things which used to require the authority of a special Act can now be effected by means of the much less expensive machinery of a provisional order. This is an order made by

some department of the government, such as the Local Government Board, or the Board of Trade, after the publication of local notices and the holding of a local inquiry, and containing provisions of the same nature as those inserted in a private bill. When it has been made by the department it requires confirmation by parliament. For the purpose of obtaining this confirmation a minister representing the department concerned introduces a bill confirming the order, or a batch of orders, and this bill goes through the same stages as an ordinary private bill. Of course it may be opposed, and if it is opposed at the committee stage much expense may be incurred. But as a rule the preliminary local inquiry suffices for the consideration and satisfaction of objections, and the great majority of provisional order confirmation bills pass through parliament without opposition.

It is not always easy to draw the line between public and private bills, nor is it always easy to determine, as a matter of legislative discretion, in what cases it is expedient to allow private Acts to make local modifications of the general law. Much useful general legislation has been preceded and facilitated by Acts which have enabled experiments to be tried locally. But it is obvious that legislation of this kind requires careful watching, and the house of commons now appoints in each session a special committee, called the local legislation committee,

and refers to it all private bills promoted by municipal or other local authorities by which it is proposed to create powers relating to police, sanitary, or other local government regulations in conflict with, deviation from, or in excess of the provisions of the general law.

CHAPTER IV

FINANCE AND ADMINISTRATION

Finance

THE earliest function of parliament was to provide money for the use of the State, and this is still the most indispensable function of the house of commons.

The general principles which govern the financial action of parliament cannot be stated better than in the language, often quoted, of Sir Erskine May.

"The crown, acting with the advice of its responsible ministers, being the executive power, is charged with the management of all the revenues of the country, and with all payments for the public service. The crown therefore, in the first instance, makes known to the commons the pecuniary necessities of the government, and the commons grant such aids and supplies as are required to satisfy these demands, and provide by taxes, and by the appropriation of other sources of the public income, the ways and means to meet the supplies which are granted to them. Thus the crown demands money, the commons grant it, and the lords assent to the grant. But

the commons do not vote money unless it be required by the crown; nor impose or augment taxes unless the taxation be necessary for the public service, as declared by the crown through its constitutional advisers."

These principles may be summed up in four leading rules. The first rule regulates the constitutional relations between the crown and parliament in matters of finance. The crown, that is to say, the king, acting through his ministers, who constitute the executive government, cannot raise money by taxation, borrowing or otherwise, or spend money, without the authority of parliament.

The second rule regulates the relations between the two houses of parliament. The power to grant money in parliament, a power which includes both the raising of money by tax or loan and the authorizing of expenditure, belongs exclusively to the house of commons. The house of lords assents to, and may reject, a grant of money, but cannot initiate or alter a grant.

The third rule imposes a restriction on the power of parliament to authorize expenditure. Parliament, that is to say the house of commons, cannot vote money for any purpose whatsoever, except at the demand and upon the responsibility of ministers of the crown.

The fourth rule imposes a similar restriction on the powers of taxation. Parliament, that is to say the house of commons, cannot impose a tax, except upon the recommenda-

tion of the crown: Accordingly any proposal for the levy of a new tax or for the increase of an existing tax must come from the government. This rule only applies to general taxes, not to the taxes for local purposes which are known as rates.

These rules are constitutional rules, based partly on Acts of Parliament such as the Bill of Rights and the Act of Settlement, and partly on parliamentary usage and practice. They have to be steadily borne in mind when the financial business of parliament is under consideration.

Such then are the main rules in accordance with which the house of commons controls the raising and expenditure of the national revenue. That revenue is derived from several sources, but the chief source is taxation. The taxes imposed by the authority of parliament are partly permanent and partly temporary. The great majority of them are permanent, but, in order to maintain the control of parliament over the executive government, some of the most important of them are imposed for a year only. Under the existing practice the income tax, which is the most fruitful of the direct taxes, and the tea duty, which is one of the most important of the indirect taxes, have to be renewed every year.

The whole of the national revenues, from whatever source derived, is, with some trifling exceptions, paid into the bank of England or

the bank of Ireland to the account of His Majesty's exchequer, and is placed to the credit of a fund called the consolidated fund, and out of this fund all national payments are made. Thus there is, speaking broadly, one national till, into which all national receipts are paid and out of which all national payments are made. That till is the consolidated fund of Great Britain and Ireland.

The consolidated fund is the creation of the younger Pitt and dates from 1787. Before that date the practice had been to charge the produce of specific taxes with the payments of specific debts, representing money borrowed by the State at different times for different purposes. There had been partial consolidations of these charges, but no general consolidation. What Pitt did by his great Act of 1787 was to carry practically all the national revenue of Great Britain, whether derived from taxes, crown lands, or other sources, to one general account or fund called the consolidated fund, and to charge all the national debts on this fund. A similar measure was adopted for Ireland. For some years after the Union the debts of Great Britain and of Ireland were kept distinct, but in 1816 the consolidated funds of the two countries were united into the consolidated fund of Great Britain and Ireland.

As there are two kinds of taxes, representing different degrees of control by parliament, so there are two classes of expenditure, one

regulated by standing laws, the other by annual votes or appropriations. The public expenditure of the country is divided into two separate and distinct general heads, which are known in treasury language as the consolidated fund charges and the annual supply charges. The first head includes the more permanent charges, which have been authorized by parliament to be paid from time to time when due, the treasury being responsible for the time and mode of payment. The second head comprises the charges annually granted by parliament and thus brought under its immediate cognizance and control. Payments falling under the first head are described in statutory language as being made out of the consolidated fund. Payments under the second head are described as being made out of moneys provided by parliament. The terminology is rather confusing to one not familiar with treasury language and parliamentary procedure, because, as has been explained, all payments authorized by parliament, whether by permanent or by temporary appropriations, are made out of the consolidated fund. But the distinction is important, and materially affects the work of parliament.

The permanent charges include the annual charges for the national debt, for the civil list (that is to say for the amounts granted at the beginning of each reign to defray the personal and household expenses of the king and queen and their family and the salaries of their

personal staff), for judicial salaries, and for other payments of a fixed and permanent character.

Of these charges the first and most important is that for the national debt.

Into the history and various forms of the national debt it is impossible to enter here. It must suffice to say that what is called the funded debt, excluding terminable annuities, is debt on which the State is bound to pay interest at a fixed rate in the form of annuities, and the capital of which it is not bound to repay, but may repay at par, that is to say at the nominal value, on giving notice. Terminable annuities are merely a method by which a portion of this debt is paid off, by converting it into annuities charged at such a rate as to pay off principal and interest within a specified time. The unfunded or floating debt consists of loans, raised mainly by treasury bills for short periods, in anticipation of ordinary revenue. Besides these forms of debt there are other forms of capital liabilities, such as the loans raised under special Acts for naval or military works or for other purposes which parliament thinks may be legitimately met by borrowing.

Provision is made by law for the systematic reduction of the national debt in various ways including what are called the old and the new sinking funds. These sinking funds have nothing to do with the sinking funds of the eighteenth century, when Pitt was persuaded

for a time that debt might be extinguished by some magic operation of compound interest, though the fund for the purpose was itself raised by borrowing. They are both based in their present form on an Act of 1875, and it may be worth while to explain their nature, as reference is frequently made to them in parliamentary debates on finance. It is a general rule that any grant made by parliament for the service of a particular financial year, the year ending March 31st, lapses so far as it is unexpended at the end of the year. The rule has often been criticized as tending to hasty and wasteful expenditure towards the close of the financial year. But it has the great advantage of enabling the national accounts to be made up and balanced, and the surplus or deficit ascertained, in each year, instead of letting the accounts run on unbalanced for an indefinite period. The Act of 1875 requires the treasury to prepare within fifteen days after the expiration of every financial year an account of the public income and expenditure of the United Kingdom, showing the surplus of income or excess of expenditure during the year. Any surplus of income is required to be paid to the national debt commissioners, and applied by them towards purchasing, redeeming or paying off the national debt. This surplus is called the old sinking fund. It is sometimes made applicable, under special statutory provisions, in relief of the expendi-

ture of a subsequent year, or toward some special expenditure. The same Act of 1875 imposes on the consolidated fund a permanent annual charge for the payment of interest on the national debt, and directs that any surplus not required for the payment thus directed is to be applied by the national debt commissioners towards the redemption of the debt. This surplus over the permanent annual charge is known as the new sinking fund. The amount of this permanent annual charge was fixed by the Act of 1875 at £28,000,000, but has been varied since.

The observance of the rules, statutory and other, which regulate payments out of the consolidated fund is watched over by a permanent officer called the comptroller and auditor general. He holds office during good behaviour, subject to removal by the crown on an address from the two houses of parliament. He cannot be a member of either house. His salary is fixed by statute and charged on the consolidated fund. Thus he is independent both of parliament and of the executive government of the day. His double name indicates his dual functions. He controls the payments out of the consolidated fund by taking care that nothing is taken out of that fund without due authority. He subsequently audits the authorized expenditure, and satisfies himself that each payment was applied to the purpose to which it was appropriated.

We are now in a position to understand the steps which must be taken by the government to obtain, with the co-operation of parliament, the necessary supplies for the year. The house of commons has to do two things each year: first, to authorize the expenditure of such money as has to be provided by the annual votes, and secondly, to authorize the imposition of such taxes, other than permanent taxes, as may be required to meet the expenditure. The two operations go on concurrently, but the former begins first. The former culminates in the Appropriation Act for the year, the latter in the Finance Act for the year.

The first step is taken outside parliament, and consists in the preparation by the spending departments of estimates of their expenditure for the ensuing financial year. These are prepared towards the end of the calendar year, are submitted to and scrutinized by the treasury, and are finally approved by the cabinet.

In order to make the estimates as accurate as possible, their preparation and submission to the house of commons is put off to the latest possible moment. But there are certain things, well known to the treasury, which the house cannot do until estimates have been submitted, and which must be done before the end of March when the financial year closes. Owing to the operation of these two factors, the normal parliamentary session

usually begins somewhere near the middle of February.

It will be remembered that the house of commons cannot vote money except in pursuance of a request or demand from the crown. The demand for the money which has to be voted each year by the house of commons is embodied in the king's speech on opening parliament at the beginning of the session. The king, specially addressing the house of commons, demands the annual supply for the public service, and acquaints the commons that estimates will be laid before them of the amount that will be required. These estimates are presented to the house by the government as soon as practicable afterwards. They are not submitted to the house of lords, for that body has no concern with them.

The ordinary annual estimates for the coming financial year are presented in three parts or divisions, each comprising one of the three branches of the public service, namely the navy, the army and the civil services. Each estimate contains, first, an estimate of the total grant thereby demanded, and then a statement of the detailed expenditure under each grant, divided into subheads or items.

At the beginning of each session, as soon as the address in reply to the king's speech has been agreed to, the house of commons sets up two committees, the committee of supply and the committee of ways and means. These committees are committees of the whole

house, that is to say, they are not committees in the ordinary sense of the word, nor smaller bodies to which the house refers some matter for inquiry or consideration and report, or delegates some function, but merely, as explained in a previous chapter, the house itself transacting its business in a less formal manner, with the Speaker's chair vacant, and under the presidency of a chairman who sits at the table. The business of the committee of supply is to consider the estimates, and to vote such grants of money as appear to be required. The committee of ways and means has two functions. It has to pass resolutions authorizing the imposition of any taxes which may be required. And it has to pass resolutions authorizing the issue out of the consolidated fund of the sums required to meet the grants voted by the committee of supply. The first of these functions is important, and will be considered in connection with the budget. The other function is merely formal and consequential, and amounts to little more than authorizing cheques to be drawn for the expenditure already agreed to.

The committees of supply and ways and means date from the reign of Charles I, and at that time supply and ways and means went more closely hand in hand than they do at present. The house would consider, in one committee, how much it would grant the king for some particular need, and, immediately afterwards, in another committee, what

means it would adopt for raising the money required. At the present day the estimates give, at the beginning of the session, a comprehensive survey of the needs of the year, and later on in the session the chancellor of the exchequer, by his budget statement, gives a comprehensive survey of the mode in which he proposes to meet these needs. But the old system has left its traces in the existing procedure.

The sittings of the committee of supply continue during the greater part of the session, and, under the existing standing orders, at least twenty days must be set apart for this purpose before the fifth of August in each year. But the business at these sittings is critical rather than financial, and will be dealt with as such under another head. As a consequence of the principle that money cannot be voted except on the request of the crown, the committee of supply cannot increase a grant asked for by the estimates. Nor can the committee alter the destination of a grant. What the committee does is to criticize the administration of money voted. Any such criticism must, in order to comply with the rules of the house, be based on a motion to reduce or reject a head or item in the estimates. But the real object of this motion is usually to elicit an explanation of the proposed expenditure, or to ventilate some grievance connected with it, and, if the answer is at all satisfactory, the motion is

usually dropped. As a rule the estimates are passed as they are presented.

The exigencies of the public service make it necessary to grant money before the criticism of its administration is completed. Before the end of the financial year, *i. e.* before the end of March, the government must have enough money in hand to "carry on" with during at least a portion of the next financial year. The navy and army are allowed to apply temporarily the surplus on any of their votes to some other navy or army purpose, and therefore in their case it is sufficient to take two or three big votes before the end of March. In the case of the civil services no similar transfer of funds is allowed, and therefore it is necessary for their purposes to take a vote on account sufficient to cover any period which may be considered desirable. The remaining navy and army votes, and the civil service votes so far as they are not met by a vote on account, are discussed on the days set apart for the committee of supply during the remainder of the session, and any votes which have not been previously considered and disposed of are passed *en bloc* on the last day on which the committee sits. Besides the ordinary estimates for the year, it is often necessary to present estimates for supplementary or additional grants when the amount named in the ordinary estimate for a particular service is found to be insufficient for the purposes of the current year, or when

a need arises during the current year for expenditure on some new service not contemplated in the ordinary estimates for that year.

In order to complete the steps required by law for the issue of public money, the resolutions passed by the committee of supply have to be reported to and confirmed by the house, sitting formally with the Speaker in the chair; supplemented by the necessary resolution in the committee of ways and means, which has also to be reported and confirmed; and then finally confirmed by an Act of Parliament. One such Act, called a consolidated fund Act, has to be passed before the end of March, and similar Acts may become necessary during the course of the session. These Acts anticipate the final sanction given towards the end of the session by the annual appropriation Act. When the committee of supply has completed its work by passing all the votes asked for, and its resolutions have been supplemented by the consequential resolution in committee of ways and means, and when all these resolutions have been agreed to by the house, the bill which is to become the appropriation Act for the year is brought in. The several votes passed by the committee of supply and confirmed by the house are scheduled to this Act, and the Act requires each grant so voted to be expended upon the service to which it is thereby appropriated.

It has been seen that the comptroller and

auditor general is the officer responsible for seeing that the requirements of the law as to the issue of public money are duly observed. This is one of his functions. The other is to see that money issued is not applied to any purpose other than that to which it is appropriated. In order to do this he examines the accounts of the spending departments for each financial year, and then presents to parliament what are known as the appropriation accounts, which cover in great detail the actual expenditure in all the services for which money is voted by the committee of supply, with his reports and comments thereon. This business of examination and report occupies a considerable time, and the appropriation accounts for the year ending with the thirty-first of March in one year are usually presented in the February of the following year. They are then referred to a committee which is appointed for each session by the house of commons, and is called the committee of public accounts. This committee inspects the accounts, considers the notes made by the comptroller and auditor general of the reason for spending on each item more or less than the amount estimated, inquires into the items which need further expenditure, examining for this purpose the auditing officers of the departments and other persons, and makes a series of reports to the house. The reports of the comptroller and auditor general and of the committee of public accounts are of

the greatest possible value in checking laxity of administration. Extravagance they cannot stop: for this the government and the house of commons are responsible; but over irregularity of expenditure they exercise a very potent control. Days are sometimes set apart for a discussion of these reports by the house, but it has usually been found difficult to induce the house to take much interest in the financial irregularities of past years.

So much for the control exercised by the house of commons over expenditure. What remains to be considered is their control over taxation.

Once in every year, usually soon after Easter, the chancellor of the exchequer makes his budget statement in the committee of ways and means. He reviews the finance of the past year, comparing estimated with actual results, and then estimates his requirements for the current or forthcoming year, and explains the mode in which he proposes to raise revenue for meeting them. In so doing he always tries to make as close an approximation as possible between estimated revenue and estimated expenditure. If the estimated revenue on the existing basis is more than sufficient to meet estimated expenditure, he may be in a position to remit or reduce taxes. If it is insufficient he may have to increase existing taxes or impose new taxes. His proposals are embodied in resolutions which are usually handed in at the table

of the house immediately after the conclusion of his budget statement, and one at least of them is usually passed on the same night. The budget resolutions, like the resolutions of the committee of supply, do not obtain complete legal effect until they have been confirmed by an Act of Parliament. But it is necessary to prevent the lapse of such annual taxes as it is intended to continue, and also to guard against the loss of revenue which would in many cases arise if there were an interval between the announcement of intention to increase or impose a tax and the date at which the increase or imposition takes effect. If the intention to increase the duty on tea were announced before the date at which the increased duty took effect, tea would instantly pour into the ports at the lower rate. Consequently, under a usage which dates back at least to the time of Blackstone in the eighteenth century, a resolution for the imposition of a tax which ought on fiscal grounds to come into operation immediately takes administrative effect at once under directions given to the revenue authorities. If the resolution is approved by parliament it is embodied in and confirmed by an Act of Parliament, which for that purpose has a retrospective effect. If it should be modified in its passage through the house of commons, any amount collected in excess of that ultimately authorized would be refunded.

The budget resolutions proposed by the

chancellor of the exchequer are discussed in the committee of ways and means, which can reject or amend any resolution, but cannot, except at the instance of a minister of the crown, increase the amount proposed to be raised by taxes. When the resolutions have been passed by the committee and agreed to by the house, they form the foundation of a bill which goes through the same stages as other bills, and which, when it becomes law, is known as the Finance Act.

Formerly it was the practice to have several taxing Acts for each year. Different taxes or sets of taxes, and proposals relating to revenue administration and the national debt, were dealt with by different measures. It was in pursuance of this practice that Gladstone's proposal in 1860 to repeal the paper duties was embodied in a separate bill. But the rejection of this bill by the house of lords led to an alteration of practice. The lords had always asserted the right to reject money bills, but had never ventured to amend them. In order to make the exercise of this right of rejection more difficult, Gladstone in 1861 brought in a comprehensive taxing bill, dealing with all the taxes which were to be imposed or continued, and including a repeal of the paper duties. The practice thus established has ever since been continued, and has been developed. Until 1894 the taxing Act of the year was known as the Customs and Inland Revenue Act. In that year its

title was changed to the Finance Act, at itle which it has ever since retained. Under that title it usually includes, not only all the taxes imposed or continued for the financial year, but such fiscal regulations as may be required in relation either to the revenue or to the national debt. But some of these regulations are occasionally embodied in a separate supplemental measure.

Taxation is not the only way in which money is raised for the needs of the State. As in the case of all other business concerns, it is also necessary to borrow, either in anticipation of the ordinary receipts of the year, or to meet expenditure which cannot reasonably be expected to be defrayed out of the income of the year. Every consolidated fund Act and every appropriation Act contains a provision empowering the treasury to borrow money by short loans in the form of treasury bills, or otherwise, to the extent of the expenditure authorized by the Act. Loans of this kind form the great mass of the floating debt, and it was by the help of such loans that the government was able to carry on its work for some time after the rejection of the Finance Bill in 1909. Loans for longer periods require special legislation, which has to be preceded by resolutions similar to those which precede an ordinary finance bill.

If we ask how far the control of the house of commons over expenditure and taxation is effective, the answer will probably be, that

over irregularity of expenditure the system of control is, on the whole, effective and satisfactory, that over amount of expenditure the control is not very effective, but that the control over taxation is substantial.

When a government is charged with extravagance, the reply is usually made, and is made with truth, that the pressure of the house of commons is in the direction of expenditure rather than of economy. Economy is preached in the abstract, but the demands for expenditure are more specific and detailed, more persistent, and therefore more effective. Nothing is more difficult or more unpopular than administrative economy. Attempts in this direction have to encounter, not only arguments based on efficiency, but the still more formidable opposition proceeding from the numerous private and personal interests which would be adversely affected by retrenchment. The real custodian of the public purse, the watchdog against claimants on public funds, is the treasury, and the treasury is not popular.

It has often been suggested that the control of the treasury over the estimates should be supplemented by the action of a special committee of the house of commons charged with the duty of revising the estimates, or some branch of them, before they are submitted to what is called the committee of supply, but is, as has been seen, really the whole house. Whether such a committee would not, like

the house itself, be often more apt to advocate expenditure than economy may be doubted. But apart from this, there are serious difficulties in the way of adopting these suggestions. There is the difficulty of considering administration apart from policy, and there is also the grave objection that any such committee would share, and therefore would weaken, that exclusive responsibility for the estimates which ought to rest with the ministry. The appointment of parliamentary committees from time to time to inquire into the staff and expenditure of particular departments might be more useful and practicable. The need for some improvement in our methods of controlling expenditure is generally admitted.

On the other hand, the control of the house of commons over taxation is undeniably substantial and effective. Taxation, unlike expenditure, is always unpopular, and the chancellor of the exchequer may fairly say that it is more blessed to give than to receive. Therefore any proposals for taxation which he may bring forward are pretty sure to be met by vigilant and well-informed criticism and to encounter formidable opposition.

It is true that he can exercise greater control over the fortunes of his budget than the finance ministers of many other countries. In France the budget proposals are referred to a very strong budget committee, which takes them completely out of the hands of the

finance minister, and often returns them in a shape quite inconsistent with his general financial scheme. In Germany the position is much the same. But in England the chancellor of the exchequer retains his conduct of, and responsibility for, his financial resolutions, and the bill founded on them, from the beginning to the end of their parliamentary career. But he has to fight them through the house as best he can, and meet the criticisms which assail him from every quarter, and his proposals often undergo substantial transformation before they emerge in the form of law.

Administration.

Parliament does not govern. Parliamentary government does not mean government by parliament. Once, and once only, in the course of English history has the house of commons attempted to administer the affairs of the country through executive committees, and the precedent set by the long parliament has not been followed.

What is done by parliament, and especially by the house of commons, is in the first place to secure that the king's ministers, who control and are responsible for the executive government of the country, shall represent and have the confidence of the party, or combination of parties, which commands a majority in the house, and in the next place to

control the action of those ministers by means of questions and criticisms.

Any member has the right to address a question to any minister of the crown, being also a member of the house, about the public affairs with which he is officially connected, or a matter of administration for which he is responsible. The proper object of such a question is to obtain information on a matter of fact within the special cognizance of the minister, and the rules and practice of the house limit the right to ask questions so as to confine them to this object. The practice of putting questions to ministers developed rapidly during the latter half of the nineteenth century and tended to occupy so much time that restrictions became necessary. Under the existing rules notice of any such question must except in special cases, appear on the notice paper of the house at least one day before the answer is to be given, so that the minister may have time to prepare his answer. If a member wishes his question to be answered orally, he marks it with an asterisk, and a period of about three-quarters of an hour is set apart on four afternoons of the week for the answering of such questions. During that period supplementary questions may be asked within limits determined by the Speaker, but no debate is allowed to arise, and in this respect the English practice differs from the "interpellations" of the French chamber. A minister cannot be compelled

to answer a question, and sometimes declines to do so on the ground of public interest. It is for him to determine what kind of answer is likely to be considered proper and sufficient in the circumstances of the case. An unsatisfactory answer may give rise to a motion for adjournment of the house, which, under one of the standing orders, is the technical mode of obtaining a discussion at a later hour of the day. But such a motion is not allowed unless the matter to be discussed is a "definite matter of urgent public importance," and the Speaker is strict in his interpretation of this rule. The answers to "unstarred" questions, and to "starred" questions for which time cannot be found within the allowed period, are circulated to members subsequently.

Asking questions in the house is one of the easiest methods by which a member can notify to his constituents the attention which he devotes to public affairs and to their special interests. For this and other reasons, the right to ask questions is specially liable to abuse, and its exercise needs careful supervision by the Speaker and those acting under his authority. But there is no more valuable safeguard against maladministration, no more effective method of bringing the searchlight of criticism to bear on the action or inaction of the executive government and its subordinates. A minister has to be constantly asking himself, not merely whether his proceedings

and the proceedings of those for whom he is responsible are legally or technically defensible, but what kind of answer he can give if questioned about them in the house, and how that answer will be received.

The asking of questions is not the only mode in which the house can obtain information from or through the government. It can, on the motion of any member, obtain returns supplying such information on matters of public importance as is obtainable through departments of the government. A motion for a return may be opposed on grounds of public policy, such as that the disclosure of the information sought is not for the public interest, or that its supply would involve unreasonable labour and expense, but much information thus sought is periodically supplied in the form of "unopposed returns." The government can also and frequently does, on its own initiative, lay papers before the house, papers technically known as "command papers" because they are supposed to be presented by command of the king. Other methods of obtaining information are the appointment of a parliamentary committee, of a royal commission, or of a departmental committee, and these methods are often adopted, at the instance of parliament, when the object is to collect, consider and formulate suggestions for legislative or administrative reforms. A parliamentary committee is appointed and constituted by an order of the

house, and is armed by the house with the power of requiring the attendance of witnesses and the production of papers. It cannot sit except when the house is sitting, and is appointed for one session only, so that if its work is left unfinished at the end of the session, it must be reappointed. Sometimes there is a joint committee of the two houses, consisting of members selected by and from each house. When the questions to be discussed raise political issues a parliamentary committee is usually preferred to a royal commission or departmental committee. A royal commission is appointed and constituted by the king on the advice of the minister representing the government department specially concerned with the questions to be considered. It has no power to compel the attendance of witnesses or the production of documents unless this power is conferred on it by a special Act of Parliament. On the other hand, its sittings and duration are independent of the sittings of parliament. A departmental committee is appointed and constituted by a minister of the crown to inquire into and report on some matter connected with the business of his department. Its functions and powers are much the same as those of a royal commission.

The papers laid before either house of parliament, under an order of the house, or on the initiative of a minister, the returns periodically presented in pursuance of direc-

tions in Acts of Parliament, and the reports of committees and commissions, make up the formidable mass of official papers popularly known as "blue books."

Questions and motions for returns are means for obtaining information on which criticism may be based, but do not themselves supply opportunities for criticism. Such opportunities are afforded in various ways.

At the beginning of each session amendments may be framed on the address in reply to the king's speech in such a way as to raise a debate on almost any question of general policy or public administration. The questions usually selected are those which at the moment excite most general interest, and the debate on them extends over several days.

Any member is entitled to bring forward a motion condemning or criticizing the government or any member or department of the government. If such a motion were made by the leader of the opposition, it would be treated as a vote of want of confidence, and time would be given by the government for its discussion. But the opportunities afforded to other members for the exercise of this right are, in practice, severely limited. In the early part of the session a certain number of evenings, at first two in each week, afterwards one, are set apart for private members' motions, and members ballot for priority on these evenings. But these evenings are sometimes taken by the government under

pressure of business, disappear altogether after Whitsuntide, and, whilst available, are not always utilized to the best advantage.

More frequent and regular opportunities for reviewing and criticizing the action of the government are afforded by the various steps which, as previously explained, must be taken to obtain supply, that is to authorize expenditure. From the old constitutional principle, asserted in the earliest parliaments, that the redress of grievances should precede the grant of supply, it has been deduced as a parliamentary rule that the action of each minister, and of the departments and officers over whom he has control, can be discussed on the vote for the branch of expenditure concerned. On the motion for first going into committee of supply on the navy estimates, any question relating to the administration of the navy may be raised and discussed, and the same rule applies to the army estimates and the civil service estimates. In the committee the discussion is confined to the particular vote or votes set down for consideration, though a wider range is allowed to the debate on the first vote both in the navy estimates and in the army estimates.

A minimum number of days, not less than twenty in each session before the 5th of August, must be allotted for these discussions. The votes to be taken on each of these days are fixed by arrangement between the party whips and are practically selected by the

opposition as the natural and normal critic of the government, subject to the reservation of two or three days for the discussion of Scottish and Irish grievances. Further opportunities for discussing administration, nominally in connection with expenditure, are given by supplementary estimates, by votes on account, by the debates which may take place when votes in committee are reported to the house, and by the second and third reading stages of any consolidated fund bill or appropriation bill, for at these stages the conduct or actions of any of those who receive or administer grants specified in and sanctioned by the bill may be discussed. In this way, under the guise of fiscal discussion, every department of the government, every branch of the central administration, is liable to run the gauntlet of parliamentary criticism. Other opportunities are offered by the motion for adjournment over a recess, when great latitude of debate is allowed.

We sometimes hear about the tyranny exercised by cabinets, and by the majority on whose support they depend. It is true that the executive government of the country takes a greater share in the initiation of legislative and financial proposals, and exercises greater control over their course through the legislature, than in many countries enjoying parliamentary institutions. It is also true that the bonds of party discipline tend to tighten. But the government has to defend by argument

all its legislative and financial proposals, and may be required to explain and justify any branch of its administrative action. It must be admitted that the time allotted to the criticism of administration in committee is frittered away in the ventilation of unimportant grievances. The system has its defects but it exercises a wholesome influence on the official world, and frequently gives rise to debates of great value and importance. Nothing clears the air more effectually than a good parliamentary debate, or reveals more distinctly the currents of popular feeling and public opinion, and the force with which they flow. Of the results of such a debate the division list is a very imperfect and fallacious test. The arguments and attitude of minorities and of individual members are factors of the greatest importance in determining the action of the government.

It must be repeated that parliament does not govern, and is not intended to govern. A strong executive government, tempered and controlled by constant, vigilant, and representative criticism, is the ideal at which parliamentary institutions aim.

CHAPTER V

SITTINGS AND PROCEDURE

EVER since the beginning of parliamentary history Westminster has been the place at which parliaments have been ordinarily held. They have been held elsewhere in exceptional circumstances, but Westminster has always been their normal home. The last occasion on which parliament sat in any other place was the Oxford parliament of Charles II. The habits of Plantagenet kings were migratory, and, for reasons of war, state, or economy, they often shifted their quarters. But the Palace of Westminster, outside, yet conveniently near, their chief city, was their principal residence, and it was natural that the assemblies which developed into parliaments should usually be summoned to meet in their Westminster palace.

The old palace and the abbey closely adjoined each other, and were practically contiguous, for one passed into the abbey through a gateway from Old Palace Yard, which was the inner court of the palace. Which particular hall or room in the palace

was most frequently used for the meeting of the earliest parliaments is uncertain, but it is known that for many centuries, and down to the end of the eighteenth century, the lords sat in an ancient building at its south end. This was the building which Guy Fawkes tried to blow up.

Whether in the earliest parliaments the two houses sat together, and if so at what time they began to sit apart, is also still a matter of discussion among historians. Perhaps one is entitled to ask whether it is certain that they sat at all. As has been remarked in an earlier chapter, the proceedings of these parliaments resembled those of an eastern durbar, and one may picture to oneself the king sitting on his throne, with seats for some of his great nobles and prelates but with no more than standing room for the majority of the assembly. These would group themselves as dignity and convenience suggested, the barons who represented themselves often mingling with the knights of shires who represented counties, and separated by no physical barrier from the citizens and burgesses. However this may have been, we know that early in the reign of Edward III the commons were, after the opening of parliament, directed to withdraw for their deliberations into a separate chamber. Their place of deliberation seems to have been usually in the adjoining abbey, either the chapter-house or the refectory. Direct evi-

dence on the subject is scanty and imperfect, but tradition is uniform that until the end of Henry VIII's reign their usual place of sitting was the Westminster chapter-house. It was conveniently near the palace, and we may surmise that its use for this secular purpose was as much by order of the king as by permission of the abbot. The relations between palace and abbey, king and abbot, were very close, and it did not suit either to examine too minutely the authority of the other. Plantagenet kings kept their treasure in the abbey, close to the chapter house, and exercised rights over this part of the building. And to this day the chapter-house is, as the presence of policemen indicates, under the custody, not of the dean, but of the king's chief commissioner of works.

Henry VIII disestablished and disendowed the foundation of St. Stephen's Chapel, which had been the royal chapel of the palace, and in 1547, the first year of his successor's reign, this chapel was set apart for the use of the house of commons, and continued to be its home until the fire of 1834. After the demolitions and alterations which began in 1800, the lords sat in a large hall known at various times as the White Hall and the court of Requests, parallel to Westminster Hall, and situated where the statue of Richard Cœur de Lion now stands. At right angles to this hall, and therefore parallel to St. Stephen's Chapel, was an old building called the Painted

Chamber, from the decorations on its walls. In this chamber conferences between the two houses were usually held. The fire of 1834 destroyed the whole of the ancient palace, except Westminster Hall and the crypt and part of the cloisters of St. Stephen's Chapel. But the hall then used as the house of lords, and the Painted Chamber, were temporarily repaired and fitted up, the first for the commons, the second for the lords.

The new palace which rose on the ruins of the old was designed by Sir Charles Barry, and took many years to construct. The lords first occupied their present quarters on April 13, 1847, the commons theirs on May 13, 1850.

The old palace had ceased to be a royal residence since early in Henry VIII's reign, but remained a royal palace. Its successor is still a royal palace, and, as such, is under the charge of the lord great chamberlain, an hereditary officer of state.

The rooms set apart in the palace for the sittings of the two houses face each other in such a way that, through the intervening hall and corridors, the king's throne at the south end of the house of lords is visible from the Speaker's chair at the north end of the house of commons. At right angles to them and to Westminster Hall is St. Stephen's Hall, lined by statues of parliamentary statesmen, and occupying the site of St. Stephen's Chapel, which was the home of the house of commons for nearly 300 years.

The room in which the house of commons now sits is constructed on the same general lines as the old chapel of St. Stephen, and, like it, does not provide sitting accommodation for anything like the total number of members. In the body of the house there are less than 350 seats for the 670 members. But, for discomfort in crowding, there is compensation in ease of hearing. Any one can make himself heard without straining his voice, and business debates are therefore far more practicable than in the spacious chamber allotted to the house of representatives at Washington. The accident that the house of commons sits in a narrow room, with benches facing each other, and not, like most continental legislatures, in a semi-circular space, with seats arranged like those of a theatre, makes for the two-party system and against groups shading into each other. In the house of lords there are cross benches, but there are none in the house of commons.

So much must suffice for the place of sitting. In dealing with the time of sittings we must in the first place distinguish between a parliament, a session, and a sitting.

A new parliament is called together by means of writs of summons, which are sent out from the crown office, in pursuance of a royal proclamation and order in council, and which summon peers, direct the election of members of the house of commons, and fix the day on which the parliament is to

meet. The same proclamation dissolves one parliament and summons its successor, and a general election intervenes between the death of the one and the birth of the other. It is the king, acting on the advice of his ministers, that determines the dates of dissolution and of meeting again. Under the Septennial Act the duration of a parliament must not exceed seven years, but dissolution always anticipates the running out of the full time.

Under the Plantagenet kings a few days often sufficed for the work of each parliament. In Tudor times their duration extended longer, and the practice grew up of having several distinct sessions of the same parliament. A session is terminated by prorogation which, like dissolution, is effected by order of the king, acting on the advice of his ministers. Prorogation does not affect the seats of members, but puts an end to the current business of the session, and kills all bills which have not become law before parliament is prorogued.

A sitting of either house is terminated by adjournment, and an adjournment, unlike a dissolution or prorogation, is the act of each house, independently of, and at different times from, the other house, and merely suspends the transaction of current business.

It is in the exercise of this power that each house adjourns its sittings from day to day and over the recesses which usually take

place at Easter and Whitsuntide, and sometimes for a longer period in the autumn.

The opening of a new parliament, and of each new session, is attended by ceremonials which recall, and which date from, Plantagenet times. The king sits on his throne, with his great officers of state on either side. The benches of the house of lords are occupied by the lords spiritual and temporal, and by the peeresses. The judges, summoned as attendants, sit on their woolsacks, in the middle. The commons, as beseems their humbler station, find such room as they can, at or near the bar, with their Speaker at their head.

The hours of sitting in the house of commons have altered much in the course of centuries. In the seventeenth century a sitting would begin with prayers at 8.30 or 9 in the morning. Difficulties about artificial light discouraged late sittings, and a common form of obstruction was to oppose the order that candles be brought in. In the eighteenth century, the adjournment was still nominally till 9 o'clock in the next morning, but business practically began between 3 and 4 in the afternoon. There were late sittings, and it was the rays of the rising sun stealing through the windows of St. Stephen's that once suggested a well-known peroration to the younger Pitt.

After the middle of the nineteenth century the frequency and duration of late sittings told heavily on the health and strength of

members, but the burden was mitigated by a new standing order of 1888, the 12 o'clock rule, which terminated ordinary business at midnight. The normal hour for stopping, or, as it is technically called "interrupting," business was thrown back from 12 to 11 in 1906.

Under existing arrangements the house meets at 2.45 p.m. on Monday, Tuesday, Wednesday and Thursday. Immediately after prayers the house takes small items of formal business, such as the unopposed stages of private bills, motions for unopposed returns, and the presentation of any petitions which members may desire to present orally instead of putting them in one of the old fashioned carpet bags behind or near the Speaker's chair. Three quarters of an hour, or possibly more, are then devoted to the asking and answering of questions addressed to ministers, but these must, subject to certain limited exceptions, be finished by 3.45, so that the regular business of the day, the public business set down on the notice paper, usually begins shortly before 4 p.m. and continues until 11. After that hour opposed business cannot be taken, unless it belongs to a special "exempted" class, or unless the 11 o'clock rule has been suspended by order of the house. This not unfrequently happens under pressure of business, but, as a rule, members now get home much earlier than under the old system.

There used to be an interval for dinner, first informal and short, recognized and lengthened by an alteration of the rules in 1902, but taken away in 1906. Members now dine as and when they can, but the house is apt to be very empty between 8 and 9.30 p.m. On Fridays, which, until the later part of the session are appropriated to discussions on private members' bills, the house meets at 12 and does not take opposed business after 5 or any business after 5.30. Questions are not usually asked on Fridays.

Each house of parliament has always guarded with great jealousy its own autonomy, its power of regulating its own rights, privileges and procedure. Hence has grown up the law of parliament of which Sir Edward Coke spoke with so much reverence in the seventeenth century, and which embodies the rights, usages, practice and regulations of each house. This law consists partly of an unwritten customary law to be gathered from precedents, rulings and decisions, partly of an enacted law to be found in orders of the house. Bentham would have classified it, from another point of view, as a substantive law of rights and privileges, and an adjective law of procedure. The substantive law would include the rules which govern the rights of each house, or of the individual members of each house, in their relations to each other, to the crown, to the executive and judicial authorities of the country, and

to individuals and bodies outside parliament. The privileges which are formally claimed for the house of commons by its Speaker at the beginning of each parliament bulked large in the seventeenth century controversies between the king and parliament, and were much, and often unreasonably, insisted on by the commons of the eighteenth century. But in the twentieth century they have retired into the background, for questions as to the relations between the two houses fall under a different category. The cases in which a member of parliament, as such, can now claim any exceptional privilege or immunity, are few and rare. The Speaker guards the rights and privileges of the house and its members, but is inclined to discourage the assertion of rights which it would be difficult to enforce. "It has been the practice of the house," once said Mr. Speaker Peel, "to restrain privilege under great limitations and conditions."

Into the details of parliamentary procedure this is not the place to enter. There are venerable forms which date from the Plantagenets, such as the mode of giving the royal assent to Acts, and the Norman-French superscriptions which are placed on bills when they pass from one house to the other. There are practices which are of great antiquity, but to the origin of which no precise date can be assigned, such as the three readings of bills. There are rules of etiquette

which, from entries in the journals of Sir Symonds d'Ewes, can be traced to the reign of Elizabeth. There are curious survivals which are full of significance to the historical student, such as the formalities observed when leave is given to introduce a bill into the house of commons, formalities now occupying a few seconds, but representing, in a compressed and symbolical form, proceedings which, in the seventeenth century may have occupied days or weeks. There is a vast jungle of rulings and precedents in which a veteran member, even a ready and experienced Speaker, may occasionally lose his way. There are a few cases in which, as in the courts of law, mistaken application of precedents seems to have swerved procedure from its true course. But the general principles are clear and intelligible enough, and their detailed application is based on the experience of many centuries.

The general principles are such as ought to be observed by all deliberative assemblies. There must be authority to enforce order and decorum, and to prevent waste of time. It is for the convenience of members that they should know what business to expect when they come down to the house, and that they should not be taken by surprise. The unforeseen will often happen, in the house of commons as elsewhere, but there ought to be no unnecessary departure from the programme of the day. Hence the importance of the

rules as to notice, rules which often entrap an unwary member, but which were devised and are enforced for the protection of his colleagues. Questions on which the house has to express an opinion must be framed in such a manner as to raise a definite and intelligible issue, and this is the object of the technical rules as to amendments.

The general lines of procedure were fairly settled in the seventeenth century. The tendency of the eighteenth century was to stereotype these rules, and often to encumber them with tedious, intricate and unnecessary formalities. Rulings and precedents sufficed; standing orders, defining and altering practice, were very rare. Of the ninety-five standing orders which now regulate the public business of the house of commons, only three, dealing with finance, date from the eighteenth century, and this is not because the old orders have been repealed but because very few were made. Not until after the Reform Act of 1832 did the need of improving and simplifying the procedure of the house become apparent and urgent. Since that date there have been some fifteen committees on the public procedure of the house, besides those devoted to private bill procedure, and it is on the labours of these committees that the existing standing orders of the house are mainly based. It must, however, be repeated that the rules of procedure have never been codified. The standing orders do

not constitute, and were never intended to constitute, a code. They merely supplement, explain, and alter, in a few particulars, the customary law of the house.

It was the great and rapid growth of parliamentary business, and especially of the business for which the executive government must assume responsibility, that brought the reform of procedure to the forefront after 1832. At a later date the artistic development of what is known as obstruction made it necessary to confer on the Speaker, the chairman, and the house larger powers of dealing with deliberate efforts to clog the working of the parliamentary machine.

Under the old practice of the house the Speaker and the chairman of committees had, and exercised, powers for checking irrelevance, prolixity, repetition and obstruction, for preventing the abuse of dilatory motions, and for maintaining order and decorum. It is these powers that have now been defined and strengthened by standing orders. If a member is guilty of grossly disorderly conduct, the Speaker or the chairman of a committee of the whole house can order him to withdraw from the house. If a member disregards the authority of the chair, or abuses the rules of the house by persistently and wilfully obstructing its business, he can be "named" for the offence by the Speaker or by the chairman of a committee of the whole house, and the house can, on motion

made, make an order suspending him from the service of the house for the rest of the session. Orders of this kind, when made by the house, or by the Speaker or chairman, are enforced, if necessary, by the serjeant-at-arms with such assistance as may be required. In the case of grave disorder arising in the house the Speaker may, if he thinks it necessary, adjourn the house without question put, or suspend the sitting.

These, however, are exceptional powers, only exercised in grave and rare emergencies. To facilitate the despatch of business under normal conditions other standing orders have been required and have been made.

It may be stated in general terms that the main problems of parliamentary procedure under existing conditions are two; on the one hand, how to find time within limited parliamentary hours for the growing mass of business which devolves on the government; and, on the other hand, how to reconcile the legitimate demands of the government with the legitimate rights of the minority, the despatch of business with the duties of parliament as a grand inquest of the nation at which all public questions of real importance ought to find opportunity for adequate discussion. These are the problems to the solution of which successive amendments of standing orders have been directed.

In the first place, the time appropriated to government business has been largely

increased. Under the existing standing orders government business has precedence at every sitting except after a quarter past eight on Tuesday and Wednesday and at the sitting on Friday. In the earlier part of the session, but not in the later, private members' motions are taken on Tuesday and Wednesday evenings, and private members' bills on Fridays, but debates on opposed private bills (not private members' bills but bills dealing with railway projects and the like), and the discussion of urgent matters of public importance under motions for adjournment, may occupy Tuesday and Wednesday evenings to the displacement of private members' motions. Moreover, the exigencies of government business may, under special orders of the house, make further encroachments on the opportunities afforded to private members for initiating discussions. It must be remembered, however, that, as explained in a previous chapter, these are not the only, or indeed, the chief opportunities for the exercise of the rights of criticism which belong to private members.

In the next place it has been found necessary to provide machinery for bringing debates to a close by the operation of the closure, a term borrowed from France. Under one of the standing orders a member rising in his place may claim to move "That the question be now put," and, unless it appears to the chair that the motion is an abuse of

the rules of the house or an infringement of the rights of the minority, this preliminary question must be put forthwith, and, if it is carried, the original question is put forthwith and decided without amendment or debate. But a motion for the closure cannot be made unless the Speaker or the chairman or deputy chairman of ways and means is in the chair, and is not carried unless it appears on a division that not less than 100 members voted in its support. The effect is to leave to the chair much discretion as to the time and circumstances in which closure should, with propriety, be granted.

By recent amendments of standing orders the machinery of closure has been extended to standing committees on bills, and, when a bill is being debated in a committee of the whole house, or at the report stage, the occupant of the chair may be clothed with powers for selecting the particular amendments to be discussed.

But in recent years the machinery of the ordinary closure has been found inadequate for getting through the most important government bills of the session, and, at the instance of, but under protest from, each party in turn, more drastic measures have been adopted. They take the form of special orders of the house for the allocation of time on particular bills, are sometimes described as "closure by compartments," but are more popularly known as "the guillotine." So

much time is allotted for the discussion of a clause or a group of clauses, or a particular stage, of a bill, and, at the expiration of this time, the necessary question or series of questions is put, all remaining amendments, except government amendments, being excluded. Attempts are always made so to arrange the time as to afford opportunity for discussing all the more serious issues raised by the bill, but these attempts are usually defeated by the prolongation of debate on minor points. No one defends these orders as satisfactory. Neither party, when in power, has found itself able to do without them.

A considerable amount of time in the house of commons is occupied by the taking of divisions. The procedure is familiar to those who visit the house. A matter requiring decision is decided by means of a question put from the chair on a motion proposed by a member. When the question arises in the house, or in a committee of the whole house, the Speaker or chairman expresses his opinion as to whether the ayes or the noes have it. If his opinion is challenged by dissentient cries, he allows two minutes to elapse, in order to give time for members, who are summoned by the ringing of electric bells, to assemble from other parts of the building, and then puts the question again. If his opinion is again challenged he directs the ayes to go to the right and the noes to the

left, and appoints two tellers for each. The ayes and noes then pass through their respective division lobbies, on each side of the house, their names are taken down by the division clerks, and they are counted by the tellers, who announce the result at the table of the house. When the "guillotine" is working, the number of possible divisions on a series of questions is sometimes large, and to an outsider the process of tramping through the lobbies in successive divisions, when the result is a foregone conclusion, might seem to be a waste of time. But the experienced member knows better. Division lists are duly chronicled and recorded, and constituents measure the diligence of their member in the performance of his parliamentary duties by the number of divisions in which he takes part. Attendance at an unnecessary division is imputed to him for righteousness, and guillotine nights are useful to him in this way.

The time occupied by a division has recently been somewhat shortened by an improvement of the machinery, but of course such time-saving arrangements, useful as they are, produce no appreciable effect on the congestion of the business of the house. For that congestion devolution is the remedy most often advocated. Some relief has been given by sending bills "upstairs" to have their details discussed by what may be called true committees as distinguished from those

"committees of the whole house" which are really the house itself. But the adoption of this expedient in the case of the class of measures which occupy most time encounters much opposition. Proposals for devolution to bodies other than the parliament at Westminster raise issues too grave and controversial to be discussed where.

CHAPTER VI

ORGANIZATION OF THE HOUSE

UNDER the head of organization two distinct subjects may be legitimately treated. One is the staff of the house, and the constitution of its committees. The other is the arrangements and understandings which regulate the relations of the house to the executive government, and the relations to each other of the political parties and groups represented in the house.

In the earliest days of the house of commons, when its functions were mainly those of a petitioning body, it needed a spokesman, and some member of the house must have been selected for this purpose. The ordinary list of Speakers begins with Sir Thomas Hungerford, who held the office in the last parliament of Edward III, but there were probably others before him with similar functions. At the beginning of each parliament a member of the house of commons is elected Speaker of the house, and his tenure of office, unless terminated by resignation or death, continues during that parliament. The election is made by the house, subject to the approval

of the king, but that approval has never been withheld since Charles II objected to the appointment of Sir Edward Seymour in 1679. In the earlier days of parliament the voice of the king in the appointment of Speaker was more of a reality; he was regarded as an officer of the king and a link between the king and the house; and in the seventeenth century the conflict between his duties to the king and his duties to the house sometimes placed him in serious difficulties. The emancipation of the Speaker from the control of the king, the severance of his connection with party during his tenure of office, and the evolution of the non-partisan Speaker, armed with great powers, wielding great authority, and exercising his powers and authority in a judicial and impartial spirit, have been admirably described by Mr. Porritt in his *Unreformed House of Commons*. The modern Speaker is sometimes elected in the first instance by a party vote, but he is independent of party, his tenure of office is not affected by a change of ministry, and, if he desires to continue his services in a new parliament, the practice is to re-elect him, whatever party may be in power.

The Speaker is the representative and spokesman of the house in its collective capacity; he presides at meetings of the house; and he declares and interprets its law. He does not claim power to make or alter that law, merely to be its exponent. But where

precedents, rulings and the orders of the house are insufficient or uncertain guides, he has to consider what course would be most consistent with the usages, traditions and dignity of the house, and the rights and interests of its members, and on these points his advice is usually followed, and his decisions are very rarely questioned. Much, no doubt, depends on the personal character and qualities of the Speaker, his experience, his readiness, his tact, his knowledge of the ways and habits of members; but for many generations the deference habitually paid to the occupant of the chair has been the theme of admiring comment by foreign observers.

The Speaker's symbol of office is the mace, which is carried before him when he formally leaves and enters the house, and remains on the table while he occupies the chair. He has an official residence in the palace of Westminster, and an official salary which, like the salaries of judges, is not paid out of the votes but is charged on the consolidated fund and therefore cannot be questioned when the annual votes are under discussion. When he retires from office he usually receives a pension and a peerage.

Besides the Speaker, two other members of the house of commons receive salaries as officials of the house. These are the chairman and the deputy-chairman of ways and means, who ordinarily take the chair at meetings of committees of the whole house, and each of

whom can also act as deputy speaker during the temporary absence of the Speaker. They are appointed by the house at the beginning of each parliament, for the duration of that parliament. The chairman of ways and means is charged with some important duties in connection with private bills.

The house of commons has its permanent official staff, corresponding to the official staff of the departments of the executive government, the staff which constitutes the permanent civil service of the country. At the head of the staff of clerks is the clerk of the house, whose office dates from the fourteenth century. He is appointed by the king on the nomination of the prime minister, and he is entitled to hold his office for life. He and the two clerk assistants are the wigged and gowned officials who sit at the table of the house when the Speaker is in the chair, and who are collectively known as the clerks at the table. When the Speaker leaves the chair for a sitting of the committee of the whole house the clerk of the house has to vacate his seat also, and it is taken by the chairman of ways and means or his deputy. The serjeant-at-arms, who is also appointed by the king, holds an ancient office in the house and is a picturesque adjunct of its proceedings. But, besides his ceremonial functions, he has responsible duties to perform, and may be treated as representing the executive authority of the house. He sees to the

maintenance of order within the precincts of the house, regulates the admission of strangers, and, as housekeeper, looks after its domestic staff and arrangements.

The staff arrangements of the house of lords are somewhat different. The lord chancellor performs the functions assigned in the house of commons to the Speaker, but has not the same powers for maintaining order and controlling the course of debates. There is a lord chairman of committees, who presides over committees of the whole house, and who exercises considerable control over private bill legislation. The clerk of parliaments is the head of the staff of permanent clerks, signifies the assent of the king to legislation, and certifies with his own hand the accuracy of Acts when passed. The gentleman usher of the black rod, who has a yeoman usher to assist him, summons the commons when their attendance is required in the house of lords, and performs certain other functions, mostly ceremonial.

The house of commons delegates less of its work to committees than most legislatures, for, as has been previously explained, the so-called "committees of the whole house" are not committees in the ordinary sense of the term. But much work is done by many genuine committees. These include the standing committees on public bills, to which reference has been made in a previous chapter, the select committees on public bills or other

matters, and the small committees on private bills. They also include the sessional committees which the house appoints every session for the transaction of particular branches of its business, such as the committee of public accounts; the committee of selection which appoints the members of many committees and makes arrangements for the distribution of their business; the local legislation committee, whose functions with respect to private bills have been explained in a previous chapter; and the committee on kitchen and refreshment rooms, whose functions require no explanation.

These committees usually sit in the mornings during hours when the house is not sitting, and attendance at them imposes a severe tax on the time of many members and adds materially to their labours. The work done by them, and especially by their chairmen, is of the highest value, and is appreciated by the house, though it does not come much before the eye. There is no more useful member of the house than a competent, tactful and painstaking chairman of committees.

The other aspect of the organization of the house is of greater interest. What is it that makes the house a living organism, instead of a congeries of atoms? What are the forces which discipline its members, and regulate and co-ordinate its daily work? The answers to these questions are to be

found in the consideration of the cabinet system and the party system, two characteristically English products, which, so far as they exist elsewhere, owe their origin to transplantation from English soil, and which, according to the English view, are inseparable from each other. The stages by which these two systems have grown up in England and have developed into their present form, have been described in many admirable treatises, and it is impossible here to do more than glance at some of their leading features.

The great struggle of the seventeenth century between the king and parliament resulted in a compromise, under which executive authority was to remain with the king, but was to be exercised through ministers, having seats in parliament, and dependent for their position on the support of the dominant party in the house that provided the supplies without which government could not be carried on. The executive authority, the power of governing the country, was, in fact, put in commission, and it was arranged that the commissioners should be members of the legislative body to whom they are responsible. The process by which this change was carried out has been described as a "noiseless revolution," and is not to be found embodied in any Acts of parliament. It may be treated as having begun under William III between 1693 and 1696, but it extended over a long period of

time. In its early stages experiments were made, such as the exclusion of office-holders from parliament, experiments which, if they had succeeded, would have resulted in the establishment of an entirely different system, more resembling that set up afterwards in the United States.

The process was expedited by the fact that during nearly half a century the throne was occupied by kings who were foreigners in their origin, in their habits, in their modes of thought, in their interests and in their language, and who were therefore compelled to rely on, and to act through, ministers drawn from and representing the views of the great English families who had been mainly instrumental in bringing them over. George III, who was born and bred in England, and trained by a Scot, did not labour under similar disadvantages, and succeeded for some years in re-establishing, by indirect means, a system of personal government by the king. But the reins dropped from his hands long before the end of his life, and have not been taken back by his successors. The king, as an individual, has, in the region of executive government, receded into the background. His office remains as a potent symbol of dignity, authority, and continuity. In his individual capacity he can exercise enormous influence by wise and timely counsel. But he is not responsible for the acts or defaults of his ministers. If he should thrust

his personal authority into the foreground he would throw the machine out of gear.

What is now called the cabinet system of government was first described, accurately and graphically, by Walter Bagehot, in Lord Palmerston's time, and the main lines of his description still hold good. The system thus described was built up, not by legislation, but by understandings and conventions, is always liable to modification, and assumes different aspects from different points of view. Queen Victoria was an admirable constitutional sovereign, but it is very doubtful whether she would ever have accepted Bagehot's theory of the constitution.

The essential features of the cabinet system of government, those which distinguish it from the presidential system of the United States, and from what is called constitutional monarchy in Germany and Austria, are that the king's principal ministers, the men who are responsible for the government of the country, must be members of parliament, and must resign office if they are unable to command the confidence of the dominant party in the house of commons. They are the link between the executive authority and the legislative authority. On the one hand they are the king's ministers, exercising their powers in the king's name, and it is by them, and not by either house of parliament, or by any committee of either house, that the government of the country is carried on. On

the other hand they are members of the legislature, liable at any moment, so long as parliament is sitting, to be called to account for their actions by the house to which they belong, and dependent for their tenure of office, technically on the king's pleasure, but practically on the good-will of the house of commons. The most important of these ministers constitute the cabinet, a body of about twenty persons, having the prime minister as their chief. The cabinet has been described as a committee, but, if this description is to be accepted, they are a very informal and anomalous committee. They are not a committee of either house of parliament, or a joint committee of the two houses, for they are not appointed by and do not report their proceedings to either house. The members of the cabinet must be members of the privy council, and thus the cabinet may be treated as a committee of privy councillors. But it is not a committee of the privy council, for it is not appointed by and does not report its proceedings to that body. In fact the cabinet does not report its proceedings at all. Its meetings are private, and are held usually in Downing Street, but often at other places, such as the prime minister's room in the house of commons. It has no secretary or clerks, keeps no record of its proceedings, and treats them as matters of secrecy, which it is a breach of confidence for any member of its body to divulge, except by permission of its

chief. The prime minister, who is the chief of the cabinet, is appointed by the king, but the king's selection is practically limited to some one of a very small number of persons. The person selected must be capable of leading the political party to which he belongs, and the selection is often indicated by the public opinion of the country. The other members of the cabinet, being the king's ministers, are also appointed by him, and, technically, may be dismissed by him. But they are practically selected by the prime minister, who takes care to choose persons who are likely to command the confidence of his party and to conduct the business of the government efficiently in parliament. If a member of the cabinet, or a minister who is not in the cabinet, finds himself unable to reconcile his political opinions on some vital point with those of his chief, he resigns his office, and a minister whose conduct or action has incurred the disapproval of parliament has sometimes been compelled to resign. But the experiment once tried by William IV of dismissing his ministers by the exercise of personal will is not likely to be repeated.

What is called the solidarity of the cabinet, by which is meant their collective responsibility for the acts and defaults of individual members of their body, and the special responsibility of the prime minister, as their chief, for their acts, and even for their words, is a principle which has been developed by a

process of slow growth, and the application of which is still liable to be a matter of controversy and doubt. Much depends on personal character, time and circumstances. There have been times when a powerful personality, like that of Peel, has dominated and controlled the administration in all its branches. At other times the prime minister's reins have been held more loosely, and the work of government has tended to fall into separate, almost watertight, compartments. There have been grave questions which have been treated as open because the members of the cabinet could not come to an agreement about them. On other questions, the extent to which a member of the cabinet should, in the public interest, subordinate his convictions to those of his chief or his colleagues is a matter for the individual conscience. If the strain is too severe, the cabinet may shed some of its members, as in 1867 and again in 1903. But, speaking generally, it is considered to be the duty of members of the cabinet, and of members of the government who are outside the cabinet, to present a united front in dealing with all the more important questions that come before parliament.

The ministry, the cabinet, must govern. But how can they control the body on whose favour their existence depends? How can they prevent the house of commons from being an unorganized, uncontrollable, irre-

sponsible mob? The English answer is, by party machinery. It is this machinery that secures the necessary discipline. The cabinet system presupposes a party system, and, more than that, a two-party system. This does not mean that there may not be individual members of the legislature independent of party, or that there may not be more than two parties in each house. But it does mean that there must be two main parties, one represented by the treasury bench, the bench on which the ministers sit, and the other by the front opposition bench, and that the party represented by the treasury bench must be able, with or without its allies, to control the majority of the house of commons. The system also implies, for its efficient working, an experienced and responsible opposition, a body of men whose leaders have held office in the past and may look forward to holding office in the future. The phrase "his majesty's opposition," which was invented by John Cam Hobhouse (Lord Broughton) in the early part of the last century, means a body of men who may, if the balance of party power shifts, become, or be willing to follow, his majesty's ministers.

In the eighteenth century, and later, the "influence" which held the dominant party together and secured their votes, took the gross and material form of places and bribes. The methods have been changed, but traces of them still remain. It is said that an

intelligent foreigner, anxious to obtain information about the working of our parliamentary system, recently asked a minister what was the official title of the person described to him as the chief government whip. "The patronage secretary of the treasury," was the reply. "Ah," he said, with a sagacious smile, "Now I understand, you need not tell me any more." Of course he was under a misapprehension, but intelligent foreigners are full of half-knowledge.

What does the expression "whip" mean in parliamentary language, and what is its origin? The metaphor is borrowed from the hunting-field, and its parliamentary application can be traced to Burke. In May 1769 there was a great debate in the house of commons on the petition against the return of Colonel Luttrell for Westminster in the place of Alderman Wilkes, who had been expelled from the house by its order. The king's ministers made great efforts to bring their followers together from all quarters for this debate. Burke, who took part in the debate, referred to these efforts, and described how ministers had sent for their friends to the north and to Paris, whipping them in, than which, he said, there could not be a better phrase. The phrase thus adopted and commended by Burke caught the public fancy and soon became popular. In the Annual Register of 1772 we find a sketch of an imaginary politician of whom it is said

that "he was first a whipper-in to the Premier, and then became Premier himself." Whipper-in was ultimately abbreviated into whip.

The whips are the agents through whom party machinery is used for the conduct of the business of the house. They are the eyes and ears of their party chief. It is their business to try and discern the direction in which sections of opinion are moving, to hear any mutterings of discontent, and to suggest methods for mitigating or removing it.

The government whips are paid officials, with official titles which do not indicate their real work. The chief of them is a secretary of the treasury, others are junior lords of the treasury, and one of them often holds a post in the king's household. They have an office in Downing Street besides their official rooms at the house of commons, and perform important duties in connection with the arrangement of the business of the house. They sketch out a forecast of the probable work of the session, or of a part of the session, estimating the time which each item of work will occupy and how much time can be spared for it. The chief whip settles, under instructions from the prime minister, the programme of government business for each sitting of the house of commons, and sees that the necessary notices are handed in at the table of the house. He ascertains, by communication with the whips of the other parties, what kind

of opposition the items on the programme are likely to encounter, and how many and which of them have a reasonable chance of being reached and disposed of before the end of the sitting. He also arranges in the same way the days on which it would be most convenient to take particular votes of supply, and how committees appointed by the house are to be constituted so as to give a fair representation to various sections and interests. These are the arrangements which are referred to when members of either of the two front benches talk of communications passing through the usual channels. It is by means of arrangements and understandings of this kind, carried on through the agency of the government whips, that a great part of the business of the house is conducted, and it could not be got through in any other manner.

The whips of the other parties do not enjoy the advantage of official posts or official salaries. There are at present three of these parties in the house, each with whips of its own: the regular opposition, whose leaders are on the front opposition bench; the Irish nationalist party; and the labour party.

During the session the whips of the several parties send round notices, which are also sometimes called "whips," warning the members of their party when important divisions are expected, telling them at what hour the division will probably take place, and expressing a hope that they will be in attendance at

that time. If a member wishes to withdraw from his party, he signifies his desire not to receive these notices from its whip. He may, of course, if he pleases, declare his independence of party by declining to receive any party whip. By so doing he sometimes increases his chance of a hearing in the house, but usually endangers his seat.

These party arrangements make it easier for a member to perform his parliamentary duties. He cannot be expected to stay long in the house itself: he has quite enough to occupy him in the committee room, in the library, in the smoking room, on the terrace, or elsewhere. But when the division bell rings he hurries to the house, and is told by his whip whether he is an "Aye" or a "No." When a division takes place on party lines, the party whips act as tellers. When they do not, members understand and, if necessary, are told by their whips that they can vote as they please, irrespectively of party obligations. Requests that members may be thus freed from party obligations are not infrequently made, and there are a good many occasions on which they can be properly and usefully granted. But it may be doubted whether open questions are really popular. A house is never more interesting than when members are left free to vote according to their individual consciences and convictions, and never more puzzled. Each member has to think and decide for himself, which is

always troublesome. Not that a member is a mere pawn in the game, far from it, but the number of questions which even a member of parliament has leisure and capacity to think out for himself is necessarily limited. And it is only through machinery of the kind described that a member of parliament can reconcile his independence as a rational being with the efficiency of a disciplined and organized body.

It is not merely, and indeed not mainly, through the action of the whips that party discipline is maintained. The pressure of public opinion, and of the opinion of constituents in particular, makes itself felt in many ways, and is, as a rule, adverse to those who wobble and to those who are slack. It was in 1836 that the division lists were first regularly published, and their publication elicited a protest from some old-fashioned members against what they regarded as the imposition of shackles on their independence. In the present day the division lists are jealously scrutinized and carefully analysed, and the member who is slack in attendance or uncertain in his allegiance is apt to be severely called to account by his constituents.

CHAPTER VII

THE MEMBER AND HIS CONSTITUENTS

WHAT are the duties of a member of the house of commons? By what obligations is he bound to the constituency by which he is returned and to the political party to which he is attached? What kind of work is he expected to do, and what kind of life has he to lead? We may try to answer these questions, first by referring to some general principles, and then by giving a concrete illustration.

In November 1774, Edmund Burke was invited, on short notice, to stand for one of the two vacant seats at Bristol. He was a stranger to the place, but his colleague was a local gentleman of accommodating nature, who expressed his willingness to carry out any instructions which he might receive from his constituents. Burke was duly elected, and in his subsequent address to the electors he touched on the topic of instructions to members. This is what he said—

"Certainly, gentlemen, it ought to be the happiness and glory of a representative to live in the strictest union, the closest corre-

spondence, and the most unreserved communication with his constituents. Their wishes ought to have great weight with him; their opinion high respect; their business unremitted attention. It is his duty to sacrifice his repose, his pleasures, his satisfactions, to theirs; and above all, ever, and in all cases, to prefer their interest to his own. But, his unbiased opinion, his mature judgment, his enlightened conscience, he ought not to sacrifice to you, to any man, or to any set of men living. These he does not derive from your pleasure; no, nor from the law and the constitution. They are a trust from Providence, for the abuse of which he is deeply answerable. Your representative owes you, not his industry only, but his judgment; and he betrays, instead of serving you, if he sacrifices it to your opinion.

"My worthy colleague says his will ought to be subservient to yours. If that be all, the thing is innocent: if government were a matter of will upon my side, yours, without question, ought to be superior. But government and legislation are matters of reason and judgment, and not of inclination; and what sort of reason is that, in which the determination preceeds the discussion; in which one set of men deliberate, and another decide; and where those who form the conclusion are perhaps three hundred miles distant from those who hear the arguments?

"To deliver an opinion, is the right of all

men; that of constituents is a weighty and respectable opinion, which a representative ought always to rejoice to hear; and which he ought always most seriously to consider. But authoritative instructions; mandates issued, which the member is bound blindly and implicitly to obey, to vote and to argue for, though contrary to the clearest conviction of his judgment and conscience,—these are things utterly unknown to the laws of the land, and which arise from a fundamental mistake of the whole order and tenor of our constitution.

"Parliament is not a congress of ambassadors from different and hostile interests; which interests each must maintain, as an agent, and advocate, against other agents and advocates; but parliament is a deliberative assembly of one nation, with one interest, that of the whole; where, not local purposes, not local prejudices, ought to guide, but the general good, resulting from the general reason of the whole. You choose a member indeed: but when you have chosen him, he is not a member of Bristol, but he is a member of parliament."

This passage has become classical. The principles laid down by Burke were not novel, for they had been previously enunciated by Blackstone and others, but they had never been so eloquently or forcibly expressed. Despite the differences between the eighteenth century and the twentieth century, dif-

ferences enormous both in the character of the constituencies and in the position of the members returned, these principles would probably be accepted by most members of parliament as sound at the present day. A member of parliament is elected by a local constituency, he has special duties towards it; but he is not a mere delegate or mouthpiece; he is a member of a body which is responsible for the interests of the country at large, and, though he is influenced by the wishes and views of his constituents and by the action of his party, he does not surrender his right of independent judgment.

In the earliest days of parliamentary history the ties which bound a member to his constituents were much closer than they are at present. There were several reasons for this. The work of the house of commons was less important; the functions of the commons were mainly to present petitions for the redress of grievances and to grant taxes; they had not yet become responsible for the administration of the country. Parliaments were short. Members were required to be resident in their constituencies. They received wages from their constituents. Thus they were much in the position of paid agents of, or delegates from, particular bodies or communities, and it is not surprising that in 1339, when the commons were asked to grant an aid asked for by the king, they replied that they could not do so without consulting

the commons of the country, and for this purpose, desired that another parliament be summoned. In the fifteenth century it seems to have been the practice for borough members to address their electors and give an account of their proceedings when presenting their bills for wages and travelling expenses, so that there are ancient precedents for the addresses which twentieth-century members are expected to deliver periodically to their constituents.

Prynne, writing at a time when the receipt of wages by members had not yet become quite obsolete, says that "wages begot a greater confidence, correspondence and dependence between knights, citizens and burgesses, and those who elected and defrayed their expenses, than when or where no wages or expenses were demanded and received as due by law, and gave the electors who paid just occasion to check them or detain their wages in case of abuse, neglect, or unnecessary protraction of their sessions."

The last person known to have received wages regularly as a member was Andrew Marvell, the poet. He was member for Hull during the first eighteen years of Charles II's reign, having been returned, not by the people of Hull, but by the mayor and aldermen; and he richly earned his wages by sending regularly, almost to the day of his death, letters to his good friend the mayor, conveying information about proceedings in

parliament, and about London affairs generally. In fact he did for them the kind of work now done by the London correspondent of a local newspaper. We find him asking for instructions as to how he should act. "I desire that you will, now being the time, consider whether there be anything that particularly relates to the state of your town, or of your neighbouring country, or of yet more public concernment, whereof you may think fit to advertise me, and therein to give me any your instructions, to which I shall carefully conform."

Instructions of this kind were common in the eighteenth century, and most of the English boroughs sent instructions to their members to oppose Walpole's unpopular Excise Bill of 1733. When such instructions enjoined a policy distasteful to the crown, they were often countered by "loyal addresses," the cost of obtaining which was sometimes paid by the king or his ministers. Burke's speech of 1774 seems to have sent "instructions" out of fashion. Other modes of influencing parliamentary action remained or grew up, but this particular mode disappeared.

After the great change effected by the Reform Act of 1832, precise instructions, such as Marvell asked for and received, were no longer practicable. After that time members ceased to be nominees of individual patrons, or of a little knot of men, such as a mayor and

a dozen aldermen, and became representatives of larger and more popular constituencies, whose views and wishes had to be ascertained and formulated in a different manner.

The Redistribution Act of 1885, which was based on the principle of splitting up the country into approximately equal electoral districts, weakened, if it did not destroy, the old corporate character of constituencies, and strengthened the view that a member represents the country as a whole, and that it is merely for the convenience of election that the country is divided into electoral districts.

The modern tendency is to make an election turn, not on local questions or local interests, but on general questions which agitate the country at large. A candidate usually comes forward either as the supporter or as the opponent of the government of the day, and is expected to give a general pledge that he will act as a member of, and in accordance with the general policy of, some one of the great political parties in Parliament. He is often also harassed by demands for pledges on particular questions, such as temperance, the position of trades unions, or women's suffrage, and hampered by such pledges as he gives in response to these demands. He is expected to shape his course in parliament in conformity, or at all events consistently, with the pledges thus given, and sits, less as the representative of a particular locality, than as a member of the political party which has ob-

tained a majority of votes in that locality. He owes allegiance to his party, and to the leaders of that party. He is in no sense a mere delegate or agent, whose powers are limited and whose authority can be withdrawn. If, after his election, he should change his party, he could not be required to resign his seat. Political parties in this country are not divided from each other by any unbridgeable gulfs; they shade into each other, and it is often on a balance of competing and conflicting considerations that a man makes up his mind to attach himself to one party rather than to another. Change of circumstances or change of opinion may alter that balance, and compel him to reconsider his position. If on such reconsideration he come to the conclusion that he can no longer properly act with the political party in which he is enrolled, he does not deserve blame, he may be entitled to the highest praise, for it is not without a severe wrench that a public man severs his political ties. What a member of parliament has to consider in such a case is, how far his future course of action will be consistent with the promises which he has made to his constituents and with the expectations on the faith of which he was elected. When a member has made up his mind to cross the floor of the house and join another set of political allies, he sometimes offers to resign his seat and submit himself for re-election, in order to ascertain whether his action meets with the

approval of the majority of his constituents. But he is not bound to do this, it is merely a question of conduct, of propriety, which he must settle for himself.

It is said that party organization in parliament has become stricter in recent years, and President Lowell has adduced figures tending to confirm this statement. But in the common talk about party tyranny, and about the despotism exercised by cabinets or whips, there is, to speak plainly, much nonsense and much cant. A member of parliament is not a puppet, but a human being, very human, influenced by the same kind of considerations and actuated by the same kind of motives as his fellow mortals outside the walls of the house. He recognizes the importance of combination and organization in politics, as in the other affairs of life; he is willing to subordinate, on many points, his individual preferences and opinions to those of his leaders; and he knows that he must submit to discipline if he is to be an effective member of an organized body. But no one knows better than a political leader what arts of persuasion, what tactics of conciliation and compromise, are required to keep a party together. He knows that too severe a strain must not be put on party allegiance, that diversity of opinions within the party ranks must be recognized, and that on many points the lines of division between different opinions by no means coincide with the lines of division

between different political parties. And leaders and followers alike are aware that they cannot afford to disregard public opinion outside parliament, that they must watch its variations and fluctuations, and guide their actions accordingly. Indeed, the chief risk is that they should be too sensitive to currents and gusts of so-called public opinion, as indicated in the very fallacious weather chart of the press.

Despotic or arbitrary rule, and rigidity of discipline, are quite incompatible with the position of a member of parliament. He has to act under a variety of influences and motives, often pulling in different directions. In the lobbies, in the smoking room, on the terrace, he is brought into constant and friendly contact and intercourse not only with his political friends but with his political opponents, and has opportunities for ascertaining their views, and also for influencing their opinions and actions. He may be, from the whips' point of view, a troublesome member and uncomfortably independent, apt to bolt, always to be watched and often to be soothed. Or he may be a " safe " member, one who can be counted on to vote straight, who is not often heard in debate, but who has acquired a reputation for sound judgment, and whose warnings and advice always command respect. But, in any case, he is a member of a body receptive of and responsible to many, diverse, and quickly changing influ-

ences from within and from without, and incapable of being drilled into mechanical action.

During the session the immediate relations of a member are mainly with his colleagues in the house. But he is not only a member of parliament, he is also a member for a particular constituency, and his relations to his constituents, whether they have voted for him at the poll or not, are constant and close, and require unremitting attention both in and out of session and both at Westminster and elsewhere. He may be a local magnate, a man of high social position in the country, a member of a family whose name and influence have for generations been weighty in the neighbourhood. He may be a great employer of local labour. He may have made himself well and favourably known by successful administration of local affairs. He may have acquired the confidence of working men as the secretary or guiding spirit of an important industrial organization. He may be a stranger, who owes his seat to his own ability or reputation, or to the efforts, oratorical or other, of his friends. He may have "nursed" the constituency for months or years, and devoted much time, labour and money, legitimately or illegitimately, to this purpose. But, whatever he is, he will find, when he enters the house, that his duties to his constituents are absorbing and exhausting. Mere correspondence will impose a severe tax

on his time. The days when Andrew Marvell could discharge his obligations by writing a weekly letter to his "worthy friends," the mayor and aldermen of Hull, are long past. Modern constituencies are great multitudes, who use their pens freely, and expect replies. The modern member has to spend his mornings in dictating letters, and his afternoons and evenings in writing them in the library and lobbies of the house of commons. He is expected to ask questions in the house about matters of local interest, and to communicate by post the ministerial reply, with such comments as occur to him. Under Queen Elizabeth the house of commons required members to give special attention to what would now be called local bills affecting the constituency. The house was "not to go to the question of any such bill, if it concerned a town or shire, unless the knights of such shire or shires, or the burgesses of such town or towns, be then present." The modern rule works in the opposite direction, for the existing standing orders require a member of a committee on an opposed private bill to sign a declaration, not only that he has no personal interest, but that his constituents have no local interest, in the bill. The reason is that these committees act judicially, and that their members must, like judges, be above suspicion of interest or bias. Nevertheless, if a private bill comes up for discussion on general principles in the house, a member is permitted, and is

often expected, to explain how its passing or rejection would affect the interests or welfare of the constituency which he represents, and to argue for or against it accordingly. And, if the bill be not private but public, proposing a change in the general law, each member is bound to consider how the proposals will affect the constituents, or any important section of the constituents for whose welfare he is specially responsible, and to pay close attention to any representations made to him on the subject. These representations will be made to him, not merely by correspondence, but by means of deputations and personal conferences, and, although a private member is not so much beset by deputations as a minister, yet he may have, in the course of the session, to receive many deputations and take part in many conferences on his own account, and to convey, through deputations or personal interviews, the wishes and opinions of his constituents to the ministers who are responsible for the government and legislation of the country. Nor will his duties to his constituency be exhausted by attention to their legislative and administrative requirements. He has to be courteous and obliging to individual constituents, and to their wives, and daughters. He will be beset with applications for admission to the galleries, especially on days when an exciting or important debate is expected. He will often be seen conducting friends of either

sex, with whom his relations are political rather than social, through the corridors of the house, or entertaining them on the terrace, or personally conducting a numerous and happy band of school-boys or school-girls.

Such are the duties of a member to his constituents whilst he is at Westminster. But his duties elsewhere, whether during a week end or during such other intervals as he may snatch from the performance of his strictly parliamentary work, or during the longer recesses, will be numerous and various. He will have to give periodical addresses to his constituents, reviewing the proceedings in parliament, and justifying his own share in them. There will be meetings, social, charitable and political, which he will have to attend, and at many of which he will have to take the chair. There will be lectures on improving or popular subjects to deliver. There will be bazaars to open, garden parties of a popular character, and other festivities and convivialities. For many such purposes the local member will always be in request. Thus the life of a member is one of strenuous and multifarious activity. He often complains of the way in which his time is wasted at the house of commons. There are tedious hours during which he is waiting for a threatened division, whilst bores are making dull speeches, or time is being frittered away over petty details. There are anxious hours,

when he is sitting in an expectant attitude on the edge of a green bench in the house, with a bundle of notes on his lap, waiting to catch the Speaker's eye, and to deliver a speech the points of which are being anticipated from other lips, and which may never be delivered at all. But there are times of interest and excitement, when history is being made, and when he feels that he is an active participant in its making. Members who are in the house often doubt whether a career which for many seems to mean wasted energies, fruitless endeavours and baffled hopes is worth the sacrifice involved; but members who have left the house usually look wistfully and regretfully back.

Sir George Trevelyan, in his life of Macaulay, has depicted the less attractive side of parliamentary life as it presented itself in 1853:

"The tedious and exhausting routine of a political existence; waiting whole evenings for the vote, and then walking half-a-mile at a foot's pace round and round the crowded lobbies; dining amidst clamour and confusion, with a division of twenty minutes long between two of the mouthfuls; trudging home at three in the morning through the slush of a February thaw; and sitting behind ministers in the centre of a closely packed bench during the hottest weeks of a London summer."

According to a contemporary observer, this description of parliamentary life in 1853 might be applied with literal accuracy to the

parliamentary life of forty years later. Writing in 1893, Sir Richard Temple described his parliamentary experiences during the seven years and a half between the beginning of 1885 and the autumn of 1892. Sir Richard Temple entered parliament late in life, after an exceptionally brilliant career in India. He never held office in England or took a very leading part in English politics. But during the later years of the last century his quaint figure was one of the most familiar features of the house of commons. When he was not in his place in the house or tramping faithfully through a division lobby, he might often be seen conducting a party of friends, usually ladies, through the precincts, and, as his book shows, no one could have been a more competent guide. Nor could any member show a better record of assiduity to parliamentary duties. During six years he took part in 2,072 out of 2,118 possible divisions. "I never paired but once," he says, "and that was for a State function which I thought it behoved me to attend, otherwise I attended every division in which I could possibly have been present." Sickness, or attendance at the London School Board, on which he sat, accounted for all of his very rare absences.

This industrious member was a copious and indefatigable, and often a very effective, writer. For six years and more he kept a parliamentary journal of four pages for each day, and as during that time he, to

use his own words, "saw or heard nearly everything within the walls of the house itself, and much of what occurred in its precincts," he found much to record. It was from these journals that he derived the materials for the book which he published in 1893, and which he entitled *Life in Parliament*. No more graphic description of the modern house of commons, its work, its life and its ways, its aspects as a social club and as a place of political business, has ever been written, and one would be tempted to quote freely from it if it were not so easily accessible. It must suffice to quote the two imaginary instances which he gives to illustrate the life of a diligent and assiduous member, such as he assuredly was, on a "downright hard" day, and on a "comparatively easy" day.

"On an easy day the member enters the house at three o'clock, and finds that some private bill is coming on, to which he has been asked to attend by those concerned. At half-past three the questions begin, in none of which has he any particular concern. So he takes that opportunity of showing some of his constituents or their families over the house, this particular time being favourable for sightseeing, as many distinguished members are moving about, and as the house will be crowded to hear ministers answer the interpellations. Then he takes his friends to the breezy terrace for afternoon tea. This

done, he returns to his place in the chamber. He is not going to take part in the debate, to which, however, he listens with amused interest, voting in the lesser divisions from time to time, till the dinner hour, when he joins a small party which one of his colleagues is giving in a room off the terrace. Midway in dinner the electric bell summons him to a 'count,' for which he must rush to the chamber (if his party be in office), lest it should prove a 'count-out.' After this interruption he resumes his dinner, and the brief entertainment over, he returns to his place on the green benches by half-past nine, and listens to the debate. Between that hour and midnight he will for a while resort to the upper corridor adjoining the chamber, and write letters to his political friends. But he can hear all that is passing in the house, so he keeps one ear open in that direction, while his eye is fixed on his paper. At a quarter to twelve he will hear 'Division! Division!' called, and he runs down to the 'Aye' or the 'No' lobby as the case may be. After midnight the bills of private members are called, one or other of which he will oppose or support, or he may have one of his own to forward. By half-past twelve he is released for the night, thinking that the house is not an unpleasant place after all!

"On a hard day the member enters the house at eleven in the forenoon, and mounts the great staircase to the room where his com-

mittee sits on a private bill for the promotion of some material enterprise. If he happens to be chairman, he will not be able to keep his eyes and his ears off the case till four in the afternoon—without any interval for refreshment—listening to the pleadings of counsel, the points of order raised by the learned gentlemen, the evidence of promoters and opponents, the opinion of experts and so forth. Then, having actually done a day's work, he proceeds to his place in the chamber, near the end of question-time, to make some interpellation which stands in his name, and observe the answers given by the leader of the house to the tormentors on the opposition side. He then watches the progress of some full-dress debate, rising time after time in his place, and chagrined at finding some one else always called before him. At last, as the hands of the clock point to eight, he catches the Speaker's eye and is called, and then there is an adjournment for half-an-hour. He cannot, therefore, think of dining, so he takes some light refreshment speedily at the luncheon-bar. He must of course be in his place a few minutes before the time, lest the opportunity so long sought should be lost. At half-past eight, or thereabouts, he makes his speech, and after nine he has some peace of mind till he finds his speech punished by his opponents. Once or twice he will jump up to explain, with the courteous permission of the house, what he regards as a misrepre-

sentation of what he has said. All this keeps him on the alert till the division takes place shortly before midnight. After that hour he finds that some educational gentlemen, having a privileged motion to which the midnight rule does not apply, begin a discussion which lasts till say half-past one, when a division takes place, whereon the house adjourns. He then goes home tired in the small hours of the morning, saying to himself—

> 'Who would fordels bear
> To grunt and sweat under this weary life?'

This description would, with a few trifling modifications, apply to the house of commons of the present day. The house now meets at a quarter before three, and questions begin about three. Before 1902 business used to be suspended informally for about half-an-hour at dinner-time, whilst the Speaker took what was called his "chop." Now business is continuous, the Speaker being relieved by his deputy during the dinner-hour, but attendance is very scanty at that time. Opposed or contentious business now stops ordinarily at eleven instead of at midnight, and what Sir Richard Temple calls the midnight rule is now called the eleven o'clock rule. But, subject to these corrections, Sir Richard Temple's description might be safely utilized by the journalist of 1911.

CHAPTER VIII

RECORDS, THE PRESS, AND THE PUBLIC

THE house of commons possesses no early records of historical value except the old manuscript journals of the house. Three of these volumes, that with the page of protestation torn out by James I in 1621, that with the unfinished entry as to the attempted arrest of the five members in 1642, and that with the erased entry as to the dispersion of the long parliament by Cromwell in 1650, are on show in the members' library. The other volumes are in the Speaker's part of the library. But such original documents as early writs of summons, parliament and statute rolls, and old bills, and Acts, are mostly to be found either in the record office, or in the Victoria tower, which is attached to the house of lords. They relate, not to the house of commons, but to parliament as a whole.

The chief official records of the proceedings of parliament are, for the period down to the end of Henry VII's reign, the rolls of parliament, and, for the later period, the journals of the two houses.

The contents of the rolls of parliament are

to be found in six folio volumes which were printed in pursuance of orders given by the house of lords in 1767, and to which an index volume was added in 1832. The earliest entries in these volumes relate to the parliament of 1278, the latest to the parliament of 1503; but at the beginning of the first volume there are some supplemental entries, relating to the period from 1513 to 1553, and intended to supply deficiencies in the lords journals for that period.

The nature of the proceedings in the earliest parliaments has been described in Chapter I., and it will have been seen that the business related mainly to petitions for the redress of grievances, by legislation or otherwise. The bulk of the entries in the rolls of parliament consists of these petitions, with short notes of the replies. There are also a few records of the pleas held in the high court of parliament, acting in its judicial capacity. And there are descriptions of the formal proceedings at the opening of parliament. During the earlier period some of the more important of the parliamentary enactments were occasionally entered on the rolls, but it was not until the reign of Richard III that Acts of Parliament were regularly so enrolled. At a later date the petitions gradually dropped out, and only Acts were entered.

The journals of the house of lords begin in 1509, but are not complete for the whole of Henry VIII's reign. At that time the house

of commons had no fixed habitation, but found precarious lodging in the chapter house at Westminster or elsewhere. It was not until 1547 that they obtained permanent quarters in St. Stephen's Chapel, and that is the date at which the extant journals of the house of commons begin. We happen to know that at an earlier date their clerk recorded entries in a book, but all such records are lost. The commons journals for the years from 1581 to 1603 have also been lost. The series of manuscripts on which the printed edition is based was made up towards the end of the seventeenth century, and there is reason to believe that the original manuscripts were dispersed or destroyed during the great rebellion.

The earlier journals of each house are of an experimental character, and are enlivened by a personal note which vanished when the forms of entry became stereotyped. John Taylor, who kept the first journals of the house of lords in Henry VIII's reign, incidentally tells us various things about himself and his opinions. He was not only clerk of parliaments but also prolocutor of convocation. He enters the fact that the Earl of Wilts had freely and without solicitation, and in the presence of four witnesses, granted to him the presentation to the next vacancy in the living of Skyrby, in Lincolnshire. He describes in terms of exuberant eloquence how Mr. Thomas Neville acquitted

himself so well on presenting himself as Speaker that the king knighted him then and there. His entries are mainly in Latin, but he occasionally breaks into the vernacular, as where he makes a memorandum that "It is agreed by the lords that stockfishmongers and fishmongers be warned to be here on Thursday next by 9 of the clock."

The earliest entries in the commons journals are short and barren, and contain little more than the successive stages of different bills. Then come narratives, brief at first, but gradually expanding, of the formalities at the opening and the close of a session. The journal of 1562 gives as a reason for putting off the ceremony at the opening of Queen Elizabeth's second parliament that "the queen's majesty was somewhat sick of a styche." The record of proceedings in the course of a session also expands into something more than mere entries of bills. When the commons were exhorting Queen Eliazbeth to marry, we are told how she sent them a peremptory command not to proceed further in the matter, and how Mr. Speaker recited a commandment from the queen's majesty to spend little time in motions and to avoid long speeches. Orders as to procedure are noted from time to time. Questions of privilege crop up, and much space is devoted to Mr. Arthur Hall and his "lewd speeches." He seems to have "charged the house with drunkenness, as accompanied in their coun-

sels with Bacchus" and he had to expiate his offences by fine and imprisonment. In the reign of James I the entries in the commons journals become more copious, and the personal note of the journalist is more prominent. The clerk makes an entry that on one occasion during the argument on a bill, a young jackdaw flew into the house, and called "Malum omen." He tells us a good deal about a solemn feast which he attended at Merchant Taylor's Hall with the Speaker, and how he presented the feast with a "marchpane" (a kind of cake), representing the house of commons sitting. He does his best to take rough notes of speeches made in the house, but often does not succeed in getting down much more than the Latin and biblical catchwords and quotations with which the speeches of that time were plentifully interlarded. But this practice of taking at the table notes of debate, however useful it might be to the future historian, was destined to be soon checked and stopped. James I had an inconvenient habit of sending for the commons journals and perusing their contents, and we know how on one occasion he tore out an offending page with his own hand. Strong protests were made against disclosure of the proceedings of the house, and eventually, but not until the following reign, the question was settled by a resolution of the house in 1628 that the entry by the clerk of particular men's speeches was without warrant. In

1640, the "short parliament" emphasized this resolution by another, directing that Mr. Rushworth, who had then been appointed clerk assistant, "shall not take any notes here without the precedent direction and commands of this house, but only of the orders and reports of this house." Since then the record kept by the clerks at the table of the house of commons, and entered in the journals, has, with a few formal exceptions, been confined to things done, as distinguished from things said, and the report of parliamentary debates has to be sought elsewhere.

Whilst the scope of the journal was limited by the suppression of notes of speeches, it tended to expand in other directions, with the growing business of the house, and had to be supplemented, before long, by other official records.

In 1680 the house of commons, by resolution, authorized the printing and distribution to members of minutes of the daily votes and proceedings, and this practice has continued ever since, under an order of the house which is made, as a matter of course, at the beginning of each session.

The bulk and variety of the papers circulated with the "votes and proceedings," and the mass of papers thus supplied to each member of the house of commons daily during the session, has now become very formidable.

They include the agenda for the day, and also bills, notices of amendments, notices of questions, division lists and many other matters.

The short notes of proceedings taken by the clerks of each house, while sitting at the table, and circulated next morning in a printed form, are subsequently elaborated into the official journals of the house. Reports made to either house and papers presented to it were occasionally inserted in the journals from a very early date, and in the course of the seventeenth century papers of this kind were from time to time printed and published by order of the house. The number of these papers grew in the eighteenth century, and in the year 1773 a selection was made of valuable reports of committees not printed in the journals. The four volumes thus formed were supplemented in 1803 by eleven additional volumes, making fifteen in all, with an index. This became the nucleus of the vast collection of parliamentary papers, popularly called "blue books," which has been continued to the present day, and which lines so many shelves in the libraries and galleries of the two houses of parliament. It comprises more than 7,000 folio volumes, and the series for 1908 alone consists of 126 volumes and covers twenty-five feet of shelf-space. These volumes are now arranged at the end of each session under four general heads: 1. Public Bills. 2. Reports from Committees. 3. Re-

ports from Commissions. 4. Accounts and Papers. The last of these heads includes the numerous returns which are presented to parliament either in pursuance of special orders of the house of commons or of standing directions in Acts of Parliament. There are general indexes to these parliamentary papers for the two periods 1801–1852 and 1852–1899, and these are supplemented by annual and decennial indexes. The documents included in this collection are, it need hardly be said, indispensable, not only to historical students, but to the executive departments of the government, and to those who are actively concerned in legislation and administration throughout the British empire.

The orders passed by the house of commons in 1628 and 1640, forbidding their clerks to take notes of speeches, effected a complete divorce between the official records of parliamentary proceedings and the records of parliamentary debates.

From 1628, when the first volume of the commons journals ends, to 1909, when the new series of official reports of parliamentary debates begins, we are dependent for our knowledge of what was said in parliament almost entirely on private and unofficial reports. During the earlier part of this period these reports were based on notes taken surreptitiously, and were published in defiance or evasion of parliamentary orders. Afterwards each house, and especially the

house of commons, became less jealous of parliamentary reporters and tolerated their presence. Eventually parliament frankly and fully recognized the utility of publishing reports of parliamentary debates, gave every encouragement and facility to the preparation of these reports, and liberally subsidized, out of public money, a series of reports which, though not official, were authorized.

During the long parliament the house of commons put every difficulty in the way of any reporting of its debates or proceedings. In special cases reports of particular speeches were printed by its order, but the printing of speeches without parliamentary authority was expressly prohibited and in some cases severely punished. This policy of prohibition continued until, and long after, the restoration of Charles II, and consequently our knowledge of parliamentary debates during this period is very scanty and fragmentary. For instance, of the debates during the first six years of Charles II's long "Cavalier" parliament, which met in 1661, there is no record whatever except a few references in letters, memoirs and the like. In the closing years of the seventeenth century, and throughout the eighteenth century, the public demand for information about parliamentary proceedings grew rapidly and steadily, and had to be satisfied somehow. But the policy of prohibiting reports was maintained and enforced, and a severe contest was carried on between par-

liament and the press. This contest has been fully described in the pages of *May's Constitutional History*, and need not be repeated here. The two most important dates are 1738 and 1771. Before 1738 reports of debates appeared in such periodicals as the *London Magazine*, the *Gentleman's Magazine* and the *Scots Magazine*. The names of the speakers were distinguished by initials, and, in order to escape the censure of parliament, the publication was postponed until the end of the session. In 1738 there was a great discussion in the house of commons on the breach of privilege involved in these publications; the house prohibited the publication of debates on proceedings as well during the recess as during the sitting of parliament, and resolved to proceed with the utmost severity against offenders. The prohibitions were ineffectual and the struggle continued. The scene of debate was thinly veiled by the publisher under some such description as the senate of Great Lilliput, and the speakers were designated as Brutus or Mark Antony, or by other Roman titles. Meanwhile Woodgate and other prominent publishers were frequently being censured, committed to Newgate, or otherwise punished, by the indignant house. Stringent steps were taken for the exclusion of strangers and the exclusion was so severely enforced during the parliament of 1768–1774 that it has been sometimes called the unreported parliament. It was during this parlia-

ment that took place the great contest of 1771, when Colonel Onslow took the lead on behalf of privilege in the house of commons, whilst Alderman Wilkes championed the printers, and ingeniously enlisted on their behalf the sympathies and authority of the city of London.

During this period of prohibition, how did the enterprising editors and publishers of magazines and other periodicals obtain the parliamentary information which, at much risk to themselves, they supplied to the public? This is a question on which Cave, the editor of the *Gentleman's Magazine*, and Samuel Johnson, the most famous of his contributors, have thrown some light. The publication of debates in the *Gentleman's Magazine* began in July 1732. In 1738, when Johnson was about thirty years old, he was employed by Cave to revise the notes and reports of Guthrie, his chief reporter, who was not a skilful writer. Soon, instead of correcting the reports, he drew them up himself, and eventually he wrote them all. From the sitting of November 25th, 1740, to that of November 22nd, 1743, all the reports in the *Gentleman's Magazine* are from Johnson's hand, and, during that period, if we are to trust these reports, every parliamentary orator, without exception, when he rose to speak, delivered himself of a leading article in ample and sonorous Johnsonese. The reports were a great success; they sent up the circulation

of the magazine, and were translated into French and other foreign languages.

About these reports Murphy, an early biographer of Dr. Johnson, tells a curious story, which, though well known, will bear repetition. Some time in the later years of his life Johnson was dining with Foote, the actor. Among the company were Dr. Francis, known as the translator of Horace, and Murphy himself. An important debate towards the end of Sir Robert Walpole's administration being mentioned, Dr. Francis observed that "Mr. Pitt's speech on that occasion was the best he had ever read." Many of the company remembered the debate, and some passages were cited with the approbation and applause of all present. During the ardour of conversation, Johnson remained silent. As soon as the warmth of praise subsided, he opened with these words, "That speech I wrote in a garret in Exeter Street." The company was struck with astonishment, and Francis asked for an explanation, "Sir," said Johnson, "I wrote it in Exeter Street. I never had been in the gallery of the house of commons but once. Cave had interest with the doorkeepers. He, and the persons employed under him, gained admittance; they brought away the subject of discussion, the names of the speakers, the side they took, and the order in which they rose, together with notes of the arguments advanced in the course of the debate. The whole was

afterwards communicated to me, and I composed the speeches in the form which they now have in the parliamentary debates." The company bestowed lavish encomiums on Johnson, and one of them praised his impartiality, observing that he dealt out reason and eloquence with an equal hand to both parties. "That is not quite true," said Johnson. "I saved appearances tolerably well, but I took care that the Whig dogs should not have the best of it."

The account of this famous conversation was not published until at least nineteen years after it was said to have taken place, and seems to contain some trifling inaccuracies, but, in the opinion of Dr. Birkbeck Hill, the highest authority on Johnson, "the main facts may be true enough."

In the struggle of 1771 the commons were nominally victorious, but were practically defeated. Since that year the proceedings of both houses of parliament have been freely reported, but for a long time afterwards formidable difficulties stood in the way of anything like complete and accurate reports. There was no provision for the accommodation of reporters; strangers were admitted as a matter of favour and under inconvenient restrictions; they were apt to be regarded in the light of intruders into a London club, and their total exclusion was frequently and arbitrarily enforced under the orders of the house. Hence some of the most important

debates and some of the most brilliant speeches of the eighteenth century have not been reported at all, whilst in other cases our knowledge of them is derived from scanty, imperfect and inaccurate notes. It was not until after the fire of 1834 that special provision was made for the accommodation of reporters, and it was not until 1888 that the rules for the admission and exclusion of "strangers" were placed on a more rational footing. But it is needless to say that ever since the Reform Act of 1832, if not from an earlier date, the full and accurate reporting of parliamentary debates has been generally recognized as a matter of great public importance, and the provision of adequate accommodation and facilities for the public press has become one of the principal cares of the house.

At the present day those who wish to obtain information about the parliamentary debates of the past, would probably turn, in the first instance, for the earlier period, to the Parliamentary History, and for the later period to "Hansard." The compilation known as the Parliamentary History first appeared in 1751 and was then brought down to the date of the restoration of 1660. It was superseded and continued by Cobbett's well-known Parliamentary History, which came down to 1803. The materials used in this compilation are derived, partly from the rolls of parliament and the journals of the two

houses, partly from authorized reports of individual speeches, partly from fragmentary, scattered and unpublished sources, such as drafts or notes of speeches by members of parliament, but, for the eighteenth century, mainly from the accounts given in contemporary periodical publications such as those to which reference has been made above. When Cobbett's Parliamentary History was brought to a conclusion in 1803, it was succeeded by a series of reports which was at first known as Cobbett's Parliamentary Debates. In 1808 the printing of this series was taken over by Mr. T. C. Hansard, eldest son of the Luke Hansard who had been for many years, and was then, printer of the House of Commons Journals. The Hansards bought out the Cobbett interest in the publication, and after volume twenty-two (1822) the name of Cobbett disappeared from the title page. This is the publication which, in successive series, under different forms of management, and for years after the Hansard family had ceased to have any interest in it, was continued until the end of the year 1908, and is known to all the world as Hansard. It superseded the various reports which had previously chronicled the debates of George III's reign, and succeeded in triumphing over various rivals such as the Mirror of Parliament (1828–1841). It was in its inception, and continued for many years to be, a purely private venture, sup-

ported by annual subscription from members of parliament and others, having no special reporters of its own, and deriving its materials from a collation of reports prepared for the *Times*, *Morning Chronicle*, and other leading newspapers, a collation which was often aided by the corrections of the speakers.

At the end of 1877, as the result of some discussion which had taken place in the house of commons on the system of parliamentary reporting, an arrangement was made between the chancellor of the exchequer and the Mr. Hansard of the day under which, in consideration of Mr. Hansard undertaking to maintain a staff of special reporters, to report fully certain points which might be passed over by ordinary newspaper reporters as of little interest to their readers, and to limit the annual subscription to the series, the treasury undertook to subsidize the publication from public money. Contracts of the same kind, but with varying terms, were renewed from time to time with Mr. Hansard and his successor, until the end of the year 1908.

But in that year the two houses of parliament, following the recommendations of a strong committee, determined to discontinue the system of subsidizing unofficial reports, and to appoint official reporters of their own. The new system came into operation at the beginning of the session of 1909. Each house has its own staff of reporters, and its own separate reports. The reports of each day's

debates in the commons are distributed, in an unrevised form, by breakfast time next morning. The reports are made up to about 11 p.m. on the previous day, any reports of subsequent proceedings being reserved for the following number. The lords are more nervous about the form of their speeches, and do not allow them to be reported officially until opportunity has been given for their revision. Consequently their official reports do not appear until after a delay of two or three days. The new system appears to be working well, and it is a great convenience to members of the house of commons to have, in a handy form, official reports of each day's debates in time for use at the sitting of the following day.

In parliamentary language all persons who are not either members or officers of parliament are grouped together as strangers. In the days when reporting was an offence a reporter was a noxious variety of stranger who took notes which he had no business to take. Under the arrangements which have been made since, reporting has been recognized and encouraged and a distinction is drawn between reporters and visitors. In the house of commons seats are reserved for reporters, both the official reporters and the representatives of newspapers, in the gallery at the Speaker's end of the house, and accommodation for their comfort and convenience is provided in adjoining rooms.

The accommodation for visitors is provided in the gallery at the other end of the house, and in the ladies' gallery, above the reporters. In the gallery opposite the Speaker, the two front rows of seats on one side of the clock are reserved for peers, and those on the other side for distinguished strangers. They are known as the peers' gallery and the special gallery. The other rows of seats for visitors are known as the members' gallery. There is also room for a few visitors under the special gallery. During the sitting of the house orders for admission to vacant seats in the members' gallery may be obtained from the admission order office in St. Stephen's Hall. If, however, a visitor wishes to secure a place in advance he must obtain what is called an order in advance through a member, and when there is a competition for seats, as often happens when an interesting debate is expected, members draw lots with each other for the privilege of giving these envied orders. Admission to the special gallery and under the gallery can only be obtained through a member. Under existing regulations only the relations of members are admitted to the ladies' gallery, and orders in advance are obtained through members. The accommodation in the ladies' gallery is scanty, but when there is space available "supplemental orders" of admission can be obtained during the sitting of the house from the serjeant-at-arms.

The history of the struggle between the

house of commons on the one hand and the public and the press on the other, is a history of the survival of outworn forms and obsolete claims. Parliaments of the seventeenth century claimed against Stuart kings the right of private deliberation. Parliaments of later date maintained the tradition of privacy long after the reason for secrecy had disappeared, and in the eighteenth century used against the press and the public the weapon of privilege which their predecessors had used against an interfering king. Even in the nineteenth century, when it had been generally recognized that publicity of debate is an essential feature of parliamentary government, that without it the elector cannot be enlightened and informed as to the course of public affairs and the responsibility of the representative to those whom he represents cannot be enforced, even then the house of commons, whilst relaxing and indeed reversing its practice, declined to alter its rules, so that the sittings of the house were, and indeed still are, in theory private though in practice public. Until 1875 a single member of the house of commons could insist on the withdrawal of strangers, including reporters, and until 1909 there was no official report of its debates.

CHAPTER IX

THE HOUSE OF LORDS

PARLIAMENT, as has been seen, consists of two houses or chambers, the house of lords and the house of commons, and it is the house of lords that is usually referred to as the second chamber.

The house of lords is, unless an exception be made for Hungary, the oldest second chamber in the world. Of all second chambers it is the most numerous and the most hereditary in its character. And it has suffered less change in its constitution than any legislative chamber with an approximate tenure of life. It is the lineal descendant of the great council of the Plantagenet kings, before that council was reinforced by the addition of elected members. But, though its constitution has not been materially altered since those days, its numbers and composition have greatly changed.

There are now over 620 members of the house of lords, including royal princes, archbishops, dukes, marquesses, earls, viscounts, bishops, barons, and five judicial life peers. To the model parliament of 1295 were sum-

moned two archbishops, eighteen bishops, about seventy abbots and other heads of religious houses, seven earls, and forty-one barons, less than 140 in all. At first there was room for doubt and for the exercise of discretion as to who should be summoned individually as greater barons, and who should be left to be represented with other lesser barons. But the line was gradually drawn, and the fact that an individual writ of summons had been sent to a particular baron gave an hereditary right to his descendants. Dukes first made their appearance under Edward III, marquesses under his successor, and viscounts in the fifteenth century. The practice grew up of creating a peerage by the more formal method of granting letters patent, and this practice superseded the earlier system under which the right to attend as a peer depended on a writ of summons having been issued to an ancestor. The number of abbots who were summoned rapidly dwindled, and they disappeared altogether after the Reformation. The number of bishops was increased at that time, but remained stationary for centuries afterwards. When it was again increased in the nineteenth century a provision was made that not all the bishops should have seats in the house of lords. Only twenty-four bishops now sit there, besides the archbishops; a junior bishop has to wait unless he holds the see of Durham, Winchester or London.

Two points may be specially noticed about the early house of lords.

In the first place it was a small body, very small in comparison with the present house of lords, small in comparison with the contemporary house of commons. Before the Tudors the number of temporal peers never exceeded fifty-five, rarely reached that number, and once fell as low as twenty-three. During the Tudor reigns the number of temporal peers seems to have fluctuated round fifty. The number was increased under the Stuarts, but it was not until the eighteenth century that the lavish creation of peers began. Of the existing peerages only a very small proportion are really ancient.

In the second place the proportion of hereditary members of the house was formerly much smaller than it is at present. Before the Reformation the spiritual peers, whose rights were not hereditary, could usually command a majority.

The union with Scotland in 1707, and the union with Ireland in 1801, gave rise to another classification of peerages. There are peerages of England created before 1707, peerages of Great Britain created between 1707 and 1801, and peerages of the United Kingdom created since 1801. All these confer on their holders an hereditary right to sit in the house of lords. But, besides these, there are peerages of Scotland and peerages of Ireland, and the holders of these peerages

have no right to sit in the house of lords, unless they either hold also, as many of them do, peerages of the other class, or have been elected as representative peers by their brother peers of Scotland or Ireland. There are sixteen representative peers of Scotland and twenty-eight representative peers of Ireland. The Irish peers enjoy some advantages over their Scottish brethren. In the first place, if they are elected representative peers, they are elected for life, and not for a single parliament, like the Scottish peers. Then, if they are not elected, they are eligible for seats in the house of commons, though not for Irish seats. Lord Palmerston was an Irish peer, but sat in the house of commons. Lord Curzon was created an Irish peer when he went as viceroy to India, and would be eligible to a seat in the house of commons if he had not been elected as a representative Irish peer. But our sympathies with the disabilities of Scottish peers may be tempered by the reflection that their number is small and dwindling. The power to create peers of Ireland still remains, though under limitations. But the power to create peers of Scotland has ceased, and there are now not more than twenty Scottish peers who are without the right to seats in the house of lords, either as representative peers or in right of some other peerage.

The house of lords shares most of its functions with the house of commons, but

its judicial functions are peculiar to itself. The control of the house of lords, by way of appeal, over the action of the English courts of common law may be traced back to the time when it was the king's great council. The control was subsequently extended to the courts of chancery or equity in England, and to the courts of Scotland and Ireland. But it has never been extended to the ecclesiastical courts, or to the courts in British dominions beyond the seas. In appeals from these courts its place is taken by the judicial committee of the privy council.

Although the judicial functions of the house of lords are of great antiquity, the activity of their exercise, and the mode in which they have been exercised, have varied much. During the greater part of the fifteenth and sixteenth centuries they were practically dormant. During most of the eighteenth century they were exercised by the lord chancellor of the day, "sitting in judicial solitude," as Erskine May says, "with two mute, untrained lords in the background to represent the collective wisdom of the court."

Lord Selborne's scheme for amalgamating the courts threatened the judicial powers of the house of lords with extinction, for the supreme court which he called into being was intended to be supreme in fact as well as in name, and its decisions were intended to be final. But before his Judicature Act came

into operation it was amended by an Act of 1876 which restored the appellate jurisdiction of the house of lords and provided for its exercise by four salaried lords of appeal in ordinary. These lords of appeal were intended to be official peers and to hold their peerages only during their tenure of office, for the decision in the Wensleydale case that the grant of a peerage for life would not entitle the grantee to a seat in the house of lords was then still fresh in men's memories, and it was deemed expedient to draw a distinction between official peerages and life peerages. But eleven years afterwards this distinction was removed, and an Act of 1887 enabled retiring lords of appeal to retain their peerages during their life. Hence it is that the five life peers who are now in the house of lords include one former lord of appeal.

The Act of 1876 provides that no appeal can be heard by the house of lords unless at least three persons with specified legal qualifications are present. But the judgment is still, technically, the judgment of the house of lords; the Act does not disqualify any member of that house for the exercise of judicial functions; and any peer, however unlearned, may, in theory, attend and take an active part in the proceedings of an appeal. What would be the result of his attempting to do so is another question. The position is interesting, because it illustrates the possibility of the house of lords delegating

its functions, without any express change in the law, to a specially qualified committee, and also illustrates the large part played by legal fiction in our constitutional arrangements. The judicial functions of the house of lords are performed by some half-a-dozen trained lawyers, and the other members of the house take no part in and share no responsibility for these proceedings.

The arrangements during what is technically a judicial sitting of the house of lords are quite different from the arrangements during a sitting for purposes of legislation or debate. The sitting begins in the morning, and terminates before the ordinary afternoon sitting is ushered in by prayers. The small number of learned lords who attend are sprinkled about informally at the lower end of the house, in the immediate vicinity of the bar, from which they are addressed by counsel.

The general business of the house of lords usually begins at about 4.30 p.m., after prayers have been read by one of the bishops. The ordinary sittings are not long; they rarely extend beyond the dinner hour, and are sometimes over in a few minutes. The amount of business to be transacted is much less than in the house of commons, and on many days the red benches are very bare. Questions are few, there are no estimates to discuss, and debates on the different stages of bills are, as a rule, much shorter. Con-

sequently it has not been found necessary to adopt any precise allocation of time, or to have recourse to any of the methods for shortening proceedings with which the house of commons is familiar.

Subject to the important exception of financial measures, almost any public bill may be introduced in either house. But in recent practice the more important bills are, as a rule, introduced in the house of commons, with the result that in the early part of the session there is a dearth of legislative business in the house of lords, whilst at the end there is much congestion, and bills brought from the other house are hurried through with what is sometimes described as indecent and unseemly haste. Complaints have often been made on that score, and it has been suggested that parliamentary time might be saved if more of the important bills were introduced in the house of lords, in the early part of the session, when the other house is necessarily much engaged with financial business. But the government of the day, whichever party is in power, does not show much inclination to adopt this suggestion. The reason probably is, that until a measure has been discussed in the popular house it is difficult to ascertain the trend and force of public opinion, what chance the measure has of becoming law, and what amendments it is likely to require in deference to hostile or friendly criticism. Hence, in the case of

controversial measures, little is gained by passing a bill through its earlier stages in the house of lords, whilst the risk of its becoming a derelict towards the end of the session is increased.

It is the strict limitation of powers for dealing with finance that constitutes the main difference between the work of the house of lords and the work of the house of commons, and that is at the root of the comparatively subordinate position occupied in the modern constitution by the former house. The earlier stages in the development of the principle that grants of money must be initiated in the house of commons have been described in Chapter I. To the recognition of the principle by Henry IV in 1407 much importance is attached by constitutional historians, but it was not until some centuries afterwards, not until after the Restoration of 1660, when the two houses resumed those normal functions which had been interrupted by the revolution and the Cromwellian interregnum, that the house of commons formally and distinctly asserted, as against the other house, their exclusive right to control taxation. In 1671 they resolved "that in all aids given to the king by the commons, the rate or tax ought not to be altered by the lords." In 1678 they again resolved, in fuller language, "that all aids and supplies, and aids to His Majesty in parliament, are the sole gift of the commons; and

all bills for the granting of any such aids or supplies ought to begin with the commons; and that it is the undoubted and sole right of the commons to direct, limit and appoint in such bills the ends, purposes, considerations, conditions, limitations and qualifications of such grants, which ought not to be changed or altered by the house of lords." The resolutions of 1671 and 1678 were emphasized and expanded by a famous resolution passed by the house of commons on the 6th of July, 1860, at the time of the quarrel between the two houses over the repeal of the paper duty, and it is upon these resolutions that is based the practice of the house of commons in dealing with cases where they conceive that their financial rights or privileges have been infringed by the other house.

The main rules on the observance of which the commons insist may be formulated as follows—

1. The lords ought not to initiate any legislative proposal, embodied in a public bill, and imposing a charge on the people, whether by way of taxes, rates or otherwise, or regulating the administration or application of money raised by such a charge.

2. The lords ought not to amend any such legislative proposal by altering the amount of a charge, or its incidence, duration, mode of assessment, levy or collection, or the administration or application of money raised by such a charge.

It must be observed that these are claims by the house of commons, claims which have not been formally admitted by the other house, and which have not taken the form of rules embodied in any law or standing order binding on that house. But they have been recognized and relied on by leading members of the house of lords, on both sides of the house, have been generally observed in the practice of both houses, and, so far as constitutional law depends on usage and practice, may be treated as forming part of the constitutional law of the country.

It must be further observed that the application of these general rules to particular cases may and often does give rise to questions of difficulty and complexity, and that to insist too strictly on adherence to them would often cause much practical inconvenience. What is a "charge on the people"? How far ought one to pursue possible consequences and results in considering whether such a change or burden is imposed? What is exactly meant by the administration or application of money raised by a charge? All administration involves, or may involve, expenditure of public money, and would not a too literal interpretation of these words hamper the legislative action of the house of lords in a way which is neither intended nor desirable? Questions of this kind have frequently been raised for the consideration both of the Speaker and of

the house of commons, and, as a rule, have been settled in accordance with the dictates of common sense and general convenience, but in such a way as to leave the procedure elastic and the rulings not always easy to reconcile with each other. In the case of private bills, the commons have expressly waived some of their privileges by standing order. In the case of public bills the modern practice is that the Speaker intimates in the first instance whether in his opinion a case of privilege has arisen, that is to say, whether he thinks that any of the rights or privileges claimed by the house with respect to finance have been infringed. If he does think so, it is then for the house to determine, on the motion of a minister, or otherwise, whether they will insist on or will waive their privilege. If the commons assert their privilege on an amendment made by the lords, they usually send a message, giving some general reason, such as that the amendment would interfere with the public revenue, and adding that "the commons consider that it is unnecessary on their part to offer any further reason, hoping the above reason may be deemed sufficient." This is the conventional form of hinting at a claim of "privilege," and the hint is in most cases accepted by the lords on the very sound principle that it is not worth while to raise a big question except on a big issue. If, on the other hand, the commons

think that an amendment, though not strictly regular, does not materially infringe their privileges, and therefore may be accepted, they are in the habit of saving their position by having a special entry inserted in their journal explaining their reasons for acceptance. There are other ways of getting over or getting round rules of privilege so as to avoid practical inconvenience. For instance the lords sometimes insert financial provisions in a bill for the purpose of showing what they desire. These provisions are printed in italics, and, strictly speaking, are not supposed to be in the bill at all. They are merely suggestions to the house of commons which that house may adopt if it is considered expedient so to do. The practice of both houses has been, as a rule, conciliatory, and though questions of privilege between the two houses have occasionally roused grumblings of discontent, they have very rarely caused a serious breach.

The rejection of the Finance Bill in 1909 was, of course, an exception, but the controversies raised by that rejection are too acute and of too recent date to be made the subject of discussion here. The constitutional arguments on either side are well known. On the one side it was argued that this particular bill was something different from and more than an ordinary "finance" or money bill, and that, even if its scope had been merely financial, the right of the house

of lords to reject a "money bill," though rarely exercised, existed, was substantial and had never been denied. On the other hand it was argued that the alteration of practice made by Gladstone in 1861, when he embodied all the financial proposals of the year in a single measure, had merely affirmed and strengthened the true constitutional relations between the two houses, and that the rejection of a finance bill was as inconsistent with sound constitutional practice as its amendment. The relations between the two houses are not governed by statute and are beyond the cognizance of the courts of law. Therefore of legal rights and powers in the narrower sense there is no question. The question is one of constitutional usage and propriety.

But, if there is a debatable borderland between the rights and privileges claimed by the commons, and those admitted by the house of lords, the fact remains that the fiscal powers of the latter house, the powers of the lords with respect to revenue, expenditure and taxation, are strictly circumscribed. They are not consulted about the estimates, about the amounts of money to be raised, or the purposes to which those amounts are to be appropriated. Proposals for taxation do not reach them until these proposals have been sanctioned by the other house, and then in a form which makes criticism difficult. And, as the power of the executive government depends on the power

of the purse, the whole range of executive government is placed beyond their effective control. They can criticize, and their criticisms are often valuable and influential, but they cannot enforce their criticisms. The ministry cannot afford to disregard a resolution or vote of the house of commons expressing or implying condemnation of their policy of action. Such a resolution or vote must shake them, may destroy them. But they can afford to disregard a condemnatory resolution passed by the lords. In short, it is to the commons, and not to the lords, that the executive government is responsible, so far as responsibility implies enforceable control. What then remains to the house of lords? Very great powers. In the sphere of executive government, the lords can, and do, express their opinion with greater freedom than is possible in a body where the bonds of party discipline are more strictly drawn; and those who take part in and influence their debates speak with all the authority that attaches to high position, to recognized ability, and to ripe experience. Such authority is not to be measured by votes on a division, any more than the influence of debates in the house of commons is to be so measured, and is operative although it cannot be enforced. Debates in the house of lords on questions of policy and administration are often of great value, carry great weight, and materially influence the

opinion of the country and the action of the government.

In the sphere of legislation, subject to the fiscal limitations referred to above, and to some minor technical differences, the powers of the two houses are co-equal and concurrent. But the recent practice of both the great political parties has been to initiate the more important measures of legislation in the house of commons. It has been said that the initiation of these measures rests, not with the house of commons, but with the cabinet. This is perfectly true, but what is important to observe is that the body which the cabinet finds it expedient to consult first about its legislative proposals, and by whose decisions it is mainly guided, is the house of commons. Consequently the legislative functions of the house of lords are, in the most important cases of public legislation, the exercise of powers of revision and of powers of rejection.

The need of revision after a legislative measure has passed through the rough-and-tumble of a popular assembly is recognized on all sides, and the utility of the revision exercised in the house of lords is generally admitted. What is sometimes overlooked is that, though the lords often exercise advantageously independent powers of criticism, yet a large number, probably the majority, of the amendments made in public bills after they have passed from the commons to the lords are suggested by the promoters of

the bill and are made, either in pursuance of pledges for further consideration given in the former house, or to remove inaccuracies, obscurities, inconsistencies, or other defects of form which had been discovered, but for the removal of which time or opportunity had failed in the initiating house. In such cases the house of lords might be considered rather an instrument than an organ of revision.

The power of amending a bill may be exercised in such a manner as to extend beyond revision of form and details, and to make such alterations as are, in the opinion of the promoters, inconsistent with the fundamental principles of the measure. Where the power is so exercised, the action of the house of lords is tantamount to rejection.

How far, and under what conditions, is it expedient or consistent with modern constitutional practice that the lords should exercise their power of rejecting a bill sent from the commons, of delaying its passage, or of fundamentally altering its provisions? And, if differences arise on these points between the two houses, how should they be determined? To state these problems is to raise questions which are of the greatest magnitude and difficulty, and which have become the subject of one of the sharpest constitutional conflicts of modern times.

When parliament was reconstituted after the restoration of Charles II, questions were

speedily raised about the relations between the powers and jurisdiction of the two houses. And, at a somewhat later date, at times when the political complexion of the majority in the lords was whig and broad church, whilst that of the commons was tory and high church, the differences of opinion between the two houses were sometimes serious. But, during the greater part of the eighteenth century, and indeed down to the time of the Reform Act of 1832, there were no serious conflicts between them. Nor was there any reason why there should be. The causes and elements of difference were absent. The members of the house of commons were, in the main, drawn from the same classes as the members of the house of lords, represented the same opinions and interests, and were, in many cases, directly nominated by individual peers. Since 1832 the position has been materially altered. The extension of the franchise, the advance of democratic ideas, and the change of views about the powers and duties of the state in dealing with social and economic problems, have tended, and are daily tending, to widen the gulf between the popular house and the house which specially represents tradition, aristocracy and wealth. The lords have, for several generations, met the difficulties of the position by prudently and sagaciously limiting the exercise of their powers. They no longer claim the right—the constitutional as distinguished from the

legal right—to exercise concurrent powers of legislation. When a bill is sent from the commons, the lords do not, in practice, exercise freely either the right to reject it if it is not in accordance with their own views, or the right to make substantial alterations. What they claim, according to an authoritative exposition by a leading member of their house, is the right and duty "to arrest the progress of such measures whenever we believe that they have been insufficiently considered, and that they are not in accord with the deliberate judgment of the country." In short, the claim made by them is to act as arbiters between the commons and the country. The constitutional position thus assumed would be stronger if the questions at issue were questions of fact or law, the decision of which could be delegated to legal experts and dealt with in a strictly judicial spirit. As it is, the lords are open to the charge of being actuated by political or economical motives, and the need of devising some better method than now exists of reconciling and adjusting differences between the two branches of the legislature has been recognized on all sides. From the conservative point of view there are sound and solid arguments for a house of lords, but it would appear to many that to defend an aristocratic institution with democratic arguments is neither easy nor safe.

In the seventeenth century conferences

between the two houses were of frequent occurrence. They were by no means confined to differences between the houses, but extended to such subjects as the proposed union with Scotland, the general affairs of Scotland and Ireland, the petition of right and the bill of rights, the army plot of one year and the popish plot of another, and, finally, the impeachment of great men. In fact they ranged over the whole field of parliamentary affairs. The tendency of the eighteenth century was to limit their number and scope, and to give them a more formal character. They were usually, but not exclusively, confined to cases of differences of opinion about amendments made by one house in bills coming from the other, for it had become a rule of practice that, while agreement with any such amendment might be signified by message, disagreement involved a conference. These conferences were conducted by "managers" appointed by each house, the etiquette was very strict, and the proceedings were very formal. The lords sat with their hats on their heads, the members of the commons stood bareheaded. One of the managers from the house which initiated the conference read out the reasons for disagreement, and delivered the paper on which they were written to one of the managers of the other house. Then the managers parted and each set of managers reported the proceedings to the house from which they came. That was all.

These formal conferences were sometimes supplemented by what were called "free conferences," affording opportunity for discussion. But the free conferences became formal and useless, and the practice of holding them was finally abandoned in 1740, with a single subsequent exception. This exception was in 1836, when an abortive attempt was made to settle, by means of a free conference, a difference between the two houses over a municipal reform bill. The practice of holding formal conferences survived longer, and one of them, on the resolutions preliminary to the introduction of the great measure of 1833 for amending the charters of the East India Company, is described by Macaulay in a letter to his sister (June 17, 1833). "To-day we took up our resolutions about India to the house of lords. The two houses held a conference on the subject in an old Gothic room called the Painted Chamber. The painting consists of a mildewed daub of a woman in the niche of one of the windows. The lords sat in little cocked hats along a table; and we stood uncovered on the other side and delivered in our resolutions. I thought that before long it may be our turn to sit, and theirs to stand." These conferences involved, among other inconveniences, a temporary suspension of the business of both houses. At last it occurred to some sensible person that the reasons for a disagreement might as well be signified by

message as at a conference, and accordingly, by resolutions of both houses, agreed to at conferences held in May 1851, messages were substituted for conferences unless a conference, was preferred. The change was permissive only, the old procedure by conferences has never been finally abolished, and it would still be open to any member of the house, with an antiquarian turn of mind, to move that it should be revived. But such a motion is not likely to be made. What happens in the present day, when there is a disagreement over amendments in a bill, is that private and informal conferences take place, between prominent members of both parties in the case of an important government bill, or between the promoters and opponents or critics of a bill in the case of other measures, and attempts are made to arrive at some compromise. If the attempts are unsuccessful, the bill drops and fails to become law, for concurrence of both houses is needed before a bill can be submitted for the king's assent.

Messages still frequently pass from one house to the other, and mainly relate to bills, conveying information as to what either house has done on a bill or wishes the other to do. In former times these messages used to be brought from the lords by masters in Chancery, legal functionaries with large emoluments and small duties, who were abolished in the last century. Messages from the com-

mons were brought up by the members themselves, and in 1831 and 1832 Lord John Russell brought his reform bills in his own hands to the bar of the house of lords. At the present day these messages are brought from each house by the clerk of the house, who may be seen occasionally attending for this purpose in his wig and gown at the bar of the other house.

The rejection of the Finance Bill in 1909, following, as it did, the rejection of other important government measures, brought the differences between the two houses to a crisis. A general election ensued, and maintained Mr. Asquith's government in power, though with a reduced majority. The Finance Bill of the year was re-introduced in the new parliament and became law. The government introduced a Parliament Bill which was based on resolutions passed by the house of commons in June 1907 and proposed to regulate by statute the relations between the houses. The bill was read a second time, but further proceedings on it were stayed by the death of King Edward VII. A conference on the subject was then held between eight members of the two houses, four from each political party, and this conference was still sitting when parliament adjourned for an autumn recess. When Parliament re-assembled in November 1910 it was announced that the conference had failed to arrive at an agreement. Some important debates took

place in the house of lords, and that house passed resolutions of a general character for reforming their constitution and for regulating the relations between the two houses.

The general election of December 1910 gave the government a majority practically identical with that with which they went to the country. The parliament bill was reintroduced at the beginning of the session of 1911, and is still under discussion.

The proposals of the bill are—

1. If the lords withhold their assent to a money bill for more than one month after the bill has reached them, the bill may be presented for the king's assent, and, on that assent being given, will become law without the consent of the lords. It is for the Speaker of the house of commons to decide whether a bill is a money bill or not.

2. If a bill other than a money bill is passed by the commons in three successive sessions, whether of the same parliament or not, it may, on a third rejection by the lords, be presented for the king's assent, and on that assent being given, will become law. But two years must elapse between the first introduction of the bill and the date at which it passes the commons a third time.

3. Five years is substituted for seven years as the maximum duration of a parliament.

CHAPTER X

COMPARATIVE

THE phrase "mother of parliaments," as applied to the parliament at Westminster, has become so terribly hackneyed that one is almost ashamed to repeat it. But it expresses an important historical truth. It is a fact that the constitution and procedure of the legislature in every other country, with the possible exception of Hungary, are copied, directly or indirectly from, or, at least, based on ideas suggested by, the English model.

The first of these copyists were, as was proper and natural, men who were our own kith and kin, the framers of the constitution of the United States. And it is specially instructive to compare the ways of the British parliament with the ways of the American congress, because the comparison shows how a people starting with the same habits, traditions and modes of thought as our own, may, by making a cardinal point of a different constitutional principle, the severance of executive and legislative authority, arrive at curiously different results.

The delegates who met in convention at Philadelphia in 1787, under the presidency of George Washington, and with Alexander Hamilton as their master spirit, to devise a form of common government for the thirteen American States who had obtained their independence, naturally looked in the first instance, for guidance and suggestion, to the forms of government then existing in their own States.

The constitutions of these States had been developed out of charters granted to them by the king when they were English colonies, and differed in various particulars. But they all had two features in common.

In each of them there was a governor and a legislature; and the governor, who was at the head of the executive power, was independent of, and not responsible to, the legislature. In none of them was the executive government conducted by ministers who were members of and responsible to the legislature. In none of them was there a system of cabinet government, or parliamentary government, such as exists at the present day in the United Kingdom and in the British self-governing dominions beyond the seas. And, if we ask why parliamentary or cabinet government has not taken root in the United States, whilst it has taken root in all the British self-governing dominions, perhaps the chief reason is historical, namely, that the constitution of the old American

colonies, of the States which succeeded them, and of the federal government which held these States together, was suggested by and resembled the English constitution before the cabinet system had grown up or its principles were understood, whilst the constitutions of the modern British self-governing dominions are modelled on the existing constitution of the United Kingdom.

The separation of the executive from the legislature was thus one of the common features in the constitutions of the American States at the time of their union. Another was that in almost all of them the legislature then consisted (in all of them it now consists) of two houses. The need for two chambers has since then been exalted into an axiom of political science, and may at least claim to be a political dogma which has obtained very general acceptance. But, according to Mr. Bryce, the origin of the two-chamber system in America is to be sought rather in history than in theory, and is due, partly to the previous existence in some colonies of a small governor's council in addition to the popular representative body, partly to a natural disposition to imitate the mother country, with its lords and commons.

These, then, were the models which the framers of the United States constitution had before them, State constitutions with the executive independent of the legislature, and with the legislature divided into two houses

or chambers. And in adopting these two features they were influenced, not only by the natural tendency to imitation, but also by general considerations and practical needs. Among the political ideas which were "in the air" in the eighteenth century there was none that exercised greater influence on the American mind than the doctrine of the separation of powers. This doctrine owed its popularity to Montesquieu, who had based it on a generalization, a hasty and imperfect generalization, from certain features of the British constitution. According to this doctrine the legislative, executive, and judicial functions of the State ought to be separate from and independent of each other. There ought to be separate organs for each, working together, but none of them dependent on the other. The men who met at Philadelphia found some support for this doctrine in the existing constitutions of their own States; it was consonant with their views as to the expediency of guarding against the risk of concentrating powers on a single man or set of men; and they adopted it as a cardinal principle of their new constitution. They were naturally disposed also to divide their legislature into two houses as the legislatures in most of their States were divided. And they found in this division a solution of the greatest practical difficulty which they had to encounter, that of reconciling the demand for a common government with the

demand of the smaller States for recognition and safe-guarding of their separate rights. Under the constitution which they devised, the house of representatives was to represent the nation on the basis of population, whilst the senate was to represent the States. There were to be, and are, two senators from each State, small or large, but the representatives in the other house were to be, and are, distributed among the States in proportion to population, so that the more populous States outweigh the others.

Thus came into being the president, representing the executive power, the two houses of congress, representing the legislative power, and the supreme court, representing the judicial power, each authority independent within its own sphere.

Suppose a visitor from England, familiar with the working of parliamentary government at Westminster, were to arrive at Washington at the beginning of a new session, what resemblances and differences would be likely to strike him?

The first thing that would probably strike him in both houses of the legislature would be the absence of anything corresponding to the treasury or government bench. Under the constitution no person holding any office under the United States can be a member of either house of congress during his continuance in office. Consequently, neither the president, nor his cabinet, the ministers who

are at the head of his executive departments, can sit in either house. In England the ministers who are responsible for the executive work of government are members of one of the two houses of the legislature; they are responsible for their actions to parliament, and in particular to the house of commons; and, in turn, they can, as leaders of the dominant party, influence and control the action of that house.

In the United States the president does not enjoy the immunity from responsibility for political and administrative action which attaches to the English king, but he has more power: he not only reigns, but governs. He and his ministers have not to answer for their actions to congress as the king's ministers have to answer for their actions to parliament; but, on the other hand, they cannot, like English ministers, guide and control the action of the legislature.

By another article of the constitution the president is required to recommend to the consideration of congress such measures as he shall judge necessary and expedient. He does so by a message to congress at the beginning of the session, and thus his message bears some resemblance to the king's speech at the opening of parliament. But what a difference! The king's speech is prepared by the king's ministers, and contains a programme of their legislative policy. This programme they are in a position to carry

out, so far as time and circumstances permit, with the aid of their party, and for any failure to carry it out they will be called to account. But the president has no ministers to represent him in congress, or to give effect to his wishes and intentions about legislation. His message is duly read, is duly referred, without debate, to the appropriate committee, and nothing more need be heard of it. It sometimes suggests a great explosion with blank cartridge.

The English visitor would probably note in the procedure of congress sundry forms and usages which will remind him of Westminster. This is not surprising. Thomas Jefferson, when vice-president of the United States, and therefore president of the senate, compiled, for the use of the senate, a manual of procedure based on the practice, rulings and precedents of the English parliament, and Jefferson's manual is still authoritative for the procedure of both houses of congress.

But if the visitor attends the sittings of congress, especially of the larger and more popular house, the house of representatives, which corresponds in some measure to the house of commons, he will note differences greater than the resemblances.

There is not so much debating. The room of assembly is larger than the house of commons at Westminster, and the accommodation for members is ampler and more

convenient. But the acoustic qualities are inferior. It is difficult for a member to make himself heard, and easy debate in a conversational tone is impossible. That is one reason. Other reasons are, that the less formal sittings of the house, which in England are called committees of the whole house and in the United States committees of the whole, are less frequent at Washington than at Westminster, and that at Washington both the first and the second reading of bills are formal stages, and every bill goes to some one of the numerous committees of the house, and from these committees most bills never emerge. It is in these committees that is done the bulk of the legislative business of congress, including the financial business done at Westminster in committee of supply and in the proceedings on the budget. Congressional government is government by committees of congress.

The visitor to Washington might have the curiosity to look at the list of the bills introduced into congress, and to examine some of them, and see how they compare with bills introduced at Westminster. Here again he would find startling differences. The total number of bills, public and private, introduced in a single session of parliament is to be counted by hundreds. In the sixtieth congress at Washington 44,500 bills and resolutions were introduced. By resolutions are meant legislative proposals, not techni-

cally in the form of bills. Of all these bills and legislative proposals only about 275 became law—the remainder found a burial-place in the committees to which they were consigned. Thus the total output of legislation did not differ much from that of an average English session, but the proportion between bills introduced and bills passed differed enormously.

In American bills the English distinction between government bills and private members' bills is, of course, absent, for the executive government is not represented in the house by any of its members. If the president, or if any of his ministers, wishes to have a particular bill introduced, he must apply to some unofficial member of congress, and the bill, when introduced, will take its chance with other bills.

Nor is there any distinction between public and private bills. The great majority of the bills introduced deal with local and personal questions and would be classed in England as private bills, and very many of them deal with some single matter such as the grant of a pension to a particular person or the frontage of a particular building. They are suggested by and designed to meet some individual case, not to effect any general change in the law. Many of them also deal with matters which in England would be left to executive orders and regulations. Where, as in the United States, a line is

drawn between the region of legislation and the region of executive government, the legislature is always to be found crossing the boundary and poaching in its neighbour's preserves. In congress, ministers cannot be jogged to action by questions and motions.

In England, as has been seen, the ministry are mainly responsible for arranging the business, and distributing the time of the house of commons. They thus act as a business committee of the house. In the house of representatives there is no such committee, but the Speaker to some extent takes its place, and wields powers which place him in an entirely different position from the Speaker of the house of commons. All the business of the house is distributed among, and for the most part transacted in, some one of the fifty odd standing committees which are appointed at the beginning of the session, and it is the Speaker that nominates the members of these committees, and also appoints their chairmen. Among these committees are the committees of ways and means and of appropriations, which regulate the taxation and expenditure of the federal government, and the rules committee, which determines whether special facilities should be given for the consideration of such bills as succeed in emerging from the committees to which they have been referred. Without such facilities no important bills could pass,

and the facilities granted often include stringent limitations of time and speech, more stringent than those imposed by the English "closure" or "guillotine." The constitution of these committees is the first piece of work which the Speaker has to undertake after his appointment, and probably the most difficult and anxious work which he has to perform, for on the way in which it is performed depends the course of business in the session. Thus the American Speaker is not, like his prototype at Westminster, an impartial and judicial presiding authority, but a powerful party leader.

Last, but not least, among the differences between parliament and congress may be noted the fact that parliament is supreme and uncontrolled in the exercise of its legislative powers, unfettered by a written constitution or by membership of a federal community. To use the language of an authoritative writer, "parliament is a sovereign and constituent assembly. It can make and unmake any and every law, change the form of government and the succession to the crown, interfere with the course of justice, extinguish the most sacred private rights of the citizen. Between it and the people at large there is no legal distinction, because the whole plenitude of the people's rights and powers resides in it. Both practically and legally it is the only and the supreme depositary of the authority of the nation,

and is therefore, within the sphere of law, irresponsible and omnipotent."

Such are some of the resemblances and differences, of which the most complete and masterly exposition is to be found in Mr. Bryce's American Commonwealth, and they will suffice to show how widely the characteristics of the American legislature have diverged from those of the venerable body which may fairly claim to be its parent stock.

We may pass to the continent of Europe. When the Napoleonic deluge subsided in the early part of the nineteenth century it left all the European governments shattered and in ruins. The constitution of the United Kingdom alone remained standing and apparently unshaken, and it was to England that statesmen looked for their model when they set about to repair old or build new constitutions. Hence came the legislative bodies, each with two chambers or houses, which were called into existence in most parts of Europe during the last century. The procedure also of continental parliaments is largely modelled on, and copied directly or indirectly from, the procedure of the house of commons at Westminster. The National Assembly, which was the first product of the French Revolution of 1789, had no rules of procedure, and was a disorderly body. Mirabeau obtained from Dumont, whose name was afterwards so

closely associated with Bentham, a digest, which had been made by Romilly and translated into French by Dumont, of the rules of procedure observed in the British house of commons. Mirabeau laid a printed copy of this translation on the table of the French assembly, as a model which might be advantageously followed. But the assembly would have none of it. "It is English," they said, "and we don't want anything English," so it was laid aside. But it did not perish, and it is said to have been used as the basis of the rules of procedure adopted by the French chamber of deputies after the restoration of Louis XVIII. In any case, the procedure then adopted in France was evidently fashioned on an English model, and has influenced the procedure of all other European countries with parliamentary institutions. Thus the rules of parliamentary procedure in all these countries can be traced, directly or indirectly, back to Westminster as their fountain head.

Of the European constitutions some, such as Germany, Austria-Hungary and Switzerland, are federal in their character, but the form of federation differs widely in these three cases. In almost all there are two legislative chambers, composed and elected in different ways. In none of them is the second or upper chamber wholly hereditary. In France, Belgium, Holland and Sweden, the second chamber is wholly elective. In

Norway it is little more than a committee of the other chamber. In Italy the members of the senate are nominated for life by the king, on the advice of his ministers, that is to say, by the government of the day.

The relations of the head of the executive government, whether he is emperor, king, or president, to the legislature also differ widely in the different countries. In neither Germany nor Austria is there cabinet or parliamentary government in the English sense. The emperor selects his own ministers, and their continuance in office does not depend on the good-will of the legislature. But he is dependent for his resources on taxes voted by the legislature, and therefore he is liable to find himself in financial difficulties unless his ministers can obtain the support of some combination of parties or groups commanding a majority within the legislature. The government in these countries is government by officials, who are more or less controlled by assemblies elected on a more or less democratic franchise.

In France, Italy, Belgium and Holland (the list is not exhaustive) there is a system of parliamentary government much more closely resembling that of the United Kingdom. In France the president, in Italy and Belgium the king, in Holland the queen, is not a personal ruler, but, like the king of England, governs through ministers who are

members of the legislature, and are responsible to it for their actions.

Let us cross to France, as our nearest neighbour, and see how the legislature which sits at Paris compares with the parliament which sits at Westminster. There are two houses of the French legislature, the chamber of deputies, consisting of 584 members, who are elected directly for a term of four years by universal suffrage, and the senate consisting of 300 senators, who are elected for nine years, under a system of indirect election, and of whom one-third retire each year. A senator must be forty years of age. The senators are distributed between the departments, and, on the analogy between a French department and an English county, the electors to the French senate have been roughly compared, for English readers, to (1) the members for the county, (2) the chairman and members of the county council, (3) the chairman and members of the district councils, and (4) delegates elected by the urban and parish councils.

The French senate is a dignified body and contains men of great eminence, ability, and political experience. Its powers are in some respects greater than those of the English house of lords, for, though it cannot initiate financial measures, it claims and exercises the right of amending them. But, politically it is a much weaker body than the chamber of deputies. An adverse vote of the senate

has, on one or two occasions, precipitated the fate of a weak ministry, but these have been exceptional cases. It is to the more popular chamber, the chamber of deputies, that the French ministry is primarily responsible, and it is on the support of that chamber that its existence depends.

The two houses of the French legislature are not lodged in the same building, as at Westminster and Washington, but occupy different buildings, which are at some little distance from each other, and both of which are palaces dating from the French monarchy. The senate are to be found in the Palais Luxembourg, the deputies in what used to be known as the Palais Bourbon.

If you enter the hall in which the deputies hold their sittings you find yourself in a room very different from the British house of commons. It is arranged like a theatre, with seats in semicircular tiers rising behind each other. On these seats are the deputies; in galleries above them are the visitors; and facing the deputies is a raised platform, corresponding to the stage of a theatre, with the president's chair and table, and with chairs and tables for the clerks behind him. In front of the stage is the tribune, a little pulpit to which a deputy when he wishes to speak ascends by stairs, and from which he addresses the house. These differences in structural arrangements between the English house and the French house correspond to,

and tend to produce, differences in the ways and procedure of the house.

In the house of commons the representatives of the two great political parties, that of the government and that of the regular opposition, sit facing each other, on opposite sides of the house, and divided from each other by a broad aisle. The two minor parties, that of the Irish nationalist members and that of the labour members, find places of their own below the gangways. In the French chamber there is no similar line of division and demarcation between the regular supporters and the regular opponents and critics of the government. The ministers sit in the centre, facing the president and the tribune. On either side of and behind them groups shade into each other from right centre to extreme right and from left centre to extreme left, the right side, which is on the president's right hand, being, by tradition, associated with the more conservative shade of opinions. The arrangement of seats suggests and facilitates action by groups rather than action by parties, and, in point of fact, the working of parliamentary government in France depends, not as in England, on the alternation in power of two opposite parties, but on the combination of political groups. In France a complete change of ministry, involving the substitution of a set of men formerly in opposition for a set of men formerly in office, is the ex-

ception rather than the rule. What more frequently happens is a partial reconstruction of the ministry, leaving some of its former members in office, but modifying its political complexion and affinities so as to meet the needs of the situation. And in any case, the ministers do not go across from one side of the house to the other when they go out of office; the ministry remain in the centre of the house whichever set of groups predominates.

The rule which requires a French deputy to speak from the tribune and not from his own place in the house seems to an English observer to conduce to written speeches. The French orator, instead of glancing furtively at his notes, will openly place before him, on the convenient desk of his pulpit, the manuscript of his discourse. Nor is the practice useful in maintaining order. At Westminster a member is required to stand when he speaks, and two members ought not to be on their feet at the same time. But a member who is speaking often resumes his seat for a time in order to enable another member to interpose an explanatory or interlocutory remark. These informal but authorized interruptions are inconsistent with the practice of speaking from the tribune, and consequently a French member often has to make his speech under a running fire of irregular interruptions which the president endeavours ineffectually to suppress

with the help of his paper-knife and his bell. This at least is the impression produced on an English visitor, but the system doubtless has countervailing advantages which a foreigner would be apt to undervalue or overlook. It has been said, and probably with truth, that in the French house there is more finished oratory, and that the style is less conversational and slipshod, than at Westminster.

These are surface differences, which would strike the casual visitor. Observation of the proceedings of the French chamber would soon disclose other differences of great importance between its ways and the ways of the English house of commons. Among them is the committee system, which differs materially both from the practice at Westminster and from the practice at Washington. The members of the chamber are distributed by lot among eleven bureaus, and these bureaus are redistributed every month. The main function of the bureaus is to appoint members of the committees to which all bills are referred before discussion of them in the house. Every bill goes for preliminary discussion to one of these committees, and when it emerges it is placed in charge, not of the member who introduced it into the house, but of the member who is appointed by the committee as its reporter to the house. The most powerful of these committees is the budget committee, to which the annual

budget bill is referred, and the result of the French system is that the French finance minister loses that responsibility for, and preponderating control over, the fortunes of his financial proposals which is retained by the English chancellor of the exchequer.

In France and in other European countries under parliamentary government political principles of English origin have been grafted on institutions differing widely from those of England in their history, tradition, and forms of procedure, and have often been curiously metamorphosed in their adaptation to their new and strange surroundings. In the British empire the great self-governing dominions beyond the seas have not only copied British forms of parliamentary government but have inherited British traditions, usages, and modes of thought.

The British possessions which used to be classed under the common name of colony have now been divided into two classes—dominions and colonies. The former class consists of the three federations of Canada, Australia and South Africa, together with Newfoundland and New Zealand. The latter class includes the West Indian Islands, and the numerous crown colonies which are scattered over various parts of the world. The dominions enjoy what is called responsible government, that is to say, they are governed, in the English fashion, by ministers who are responsible to the legislature,

and dependent for their existence on the support of a majority in the legislature. In the other class the control of the legislature over the executive government is either absent or less complete, and the dependence on the colonial office in England is greater. For the purposes of comparison with parliamentary government in England we may dismiss from consideration the crown colonies, and confine our attention to the self-governing dominions. And we may select for comparison three main points of agreement and three main points of differences.

First, as to the points of agreement. In the self-governing dominions, (1) the legislature, with a few exceptions, consists of two chambers, (2) the executive government is responsible to the legislature, and (3) the procedure of the legislative bodies is modelled closely on parliamentary procedure in England. The first chamber is always elective. The second chamber is constituted in different ways. The members of the second chamber of the dominion of Canada are nominated for life by the crown, that is to say, by the governor general acting on the advice of his Canadian ministers. The members of the Australian senate are elected on a wide popular suffrage. In constituting the senate of the new South African federation the experiment of proportional representation has been tried. Each of the provinces of the dominion of Canada has, with two excep-

tions, Quebec and Nova Scotia, only a single legislative chamber. In four of the States which make up the Australian Commonwealth the members of the second chamber are elected; in the two others, New South Wales and Queensland, they are nominated for life. In New Zealand the members of the second chamber are nominated for a term of years. Where the second chamber is elected, the franchise for election is usually more restricted than that for election to the first chamber. But there is an important exception in the case of the Australian Commonwealth, where the franchise for election to both the chambers is the same. It must be added that the working of the two-chamber system in these countries has not been altogether satisfactory. The Canadian nominee senate is said to be weak, not in the sense that its members are wanting in character or ability, but in the sense that it exercises little political power, and proposals for amending its constitution are under consideration. In Canada most of the older provinces have discarded the two-chamber principle, and the newer provinces have not adopted it. All the colonies which are now the States of the Australian Commonwealth have a second chamber, but in most of them there have been violent conflicts between the two chambers. The senate of the Commonwealth, which was intended to be conservative, is said to have proved in practice to be more democratic than the other chamber.

The broad principles on which responsible government on the English type might be granted to a colony were first laid down in Lord Durham's famous report of 1838 on the provinces of Upper and Lower Canada. "Every purpose of popular control," he said, "might be combined with every advantage of vesting the immediate choice of advisers in the crown, were the colonial governor to be instructed to secure the co-operation of the assembly in his policy by entrusting its administration to such men as could command a majority, and if he were given to understand that he need count on no aid from home in any differences with the assembly that should not directly involve the relations between the mother country and colony." It is in accordance with the principles thus laid down that responsible government has been developed in the British colonies now known as dominions.

The principles on which that form of government rests will not be found embodied in their constitutions, any more than the identical principles of cabinet or parliamentary government in the United Kingdom are to be found in any Act of Parliament. To establish them it has sufficed to instruct the governor that he is to select his advisers from among those who can command a majority of the legislature and to be guided by their advice except in matters of imperial, as distinguished from local, concern. It was in this way that re-

sponsible government was granted to the Transvaal. When this principle has once been recognized, all the rest follows as a matter of constitutional practice.

Lastly, the procedure in these legislative bodies follows very closely the procedure in the parliament at Westminster. The instrument of constitution always contains a provision that the procedure of the legislature is, in the absence of specific direction, to be in accordance with parliamentary procedure at Westminster, and the standing orders of the dominion and colonial legislatures have drawn largely from the classic pages of *May's Parliamentary Procedure*, sometimes reproducing forms and ceremonies which have become obsolete in England.

So much for the main points of agreement between the parliamentary government of the United Kingdom and the parliamentary government of the British dominions. The points of differences which may be noted are also three. In all the dominions the powers of the legislature are limited; in most of them the form of government is federal; in all of them the spirit of the government is more democratic.

The parliament of the United Kingdom is, as has been seen, supreme. Cases might, perhaps, be imagined in which the validity of an Act of Parliament could be questioned in a court of law, but such cases do not occur. The powers of a dominion legislature are

limited in various ways, and the validity of its enactments is liable to be questioned, and often is questioned, in courts of law. It cannot make laws in conflict with any Act of Parliament the operation of which extends to the dominion, but such Acts are not numerous. It derives its powers from a written constitution and cannot exceed the powers thus conferred on it. Where the constitution is federal, the powers of the central legislature and of the local legislatures are limited in relation to each other. And lastly, the power of disallowing enactments when passed, a power corresponding to the veto formerly exercised by the king in England, is still exercised on behalf of the king in the case of enactments passed in British dominions beyond the seas. It used at one time to be very freely exercised, but its exercise is now very rare, and, as a rule, occurs only in cases where the legislature has clearly exceeded its powers or where the subject of legislation is a matter of imperial, as distinguished from local, concern.

Newfoundland has not been absorbed in the dominion of Canada. New Zealand has remained independent of the commonwealth of Australia. But, with these exceptions, the self-governing dominions are under a federal form of government. Canada was the first to federate. The Act of 1867, which constituted the dominion of Canada, contains many features suggested by the constitution

of the United States, but differs from it in important respects, particularly in entrusting larger powers to the central government. In the United States the presumption is that powers not specifically given to the federal government belong to the individual States. In Canada the presumption is the other way. Australia, which obtained a federal constitution in 1900, reverted more to the United States form of federation, but tendencies to increase the powers of the central legislature are already visible. The South African constitution of 1909 is more unitarian and less federal, that is to say the powers of the central government are greater, those of the individual states less, than either in Canada or in Australia.

On the democratic character of government and legislation in the British dominions beyond the seas it is unnecessary to enlarge. The colonists who settled Canada, Australia and New Zealand took with them many English traditions, but they did not take with them the traditions of English aristocracy. The existence, in any of these countries, of a legislature containing any hereditary element in its composition would be almost inconceivable. And the legislative experiments which are constantly being tried in Australia and New Zealand show how powerful is the influence exercised by the working classes on the actual of their legislatures.

These comparisons might be extended

indefinitely, but we may end as we began. To the model parliament held by the first Plantagenet Edward may be traced back all the parliaments and legislatures which, during the reign of his latest namesake on the English throne, were making laws in every part of the civilized world.

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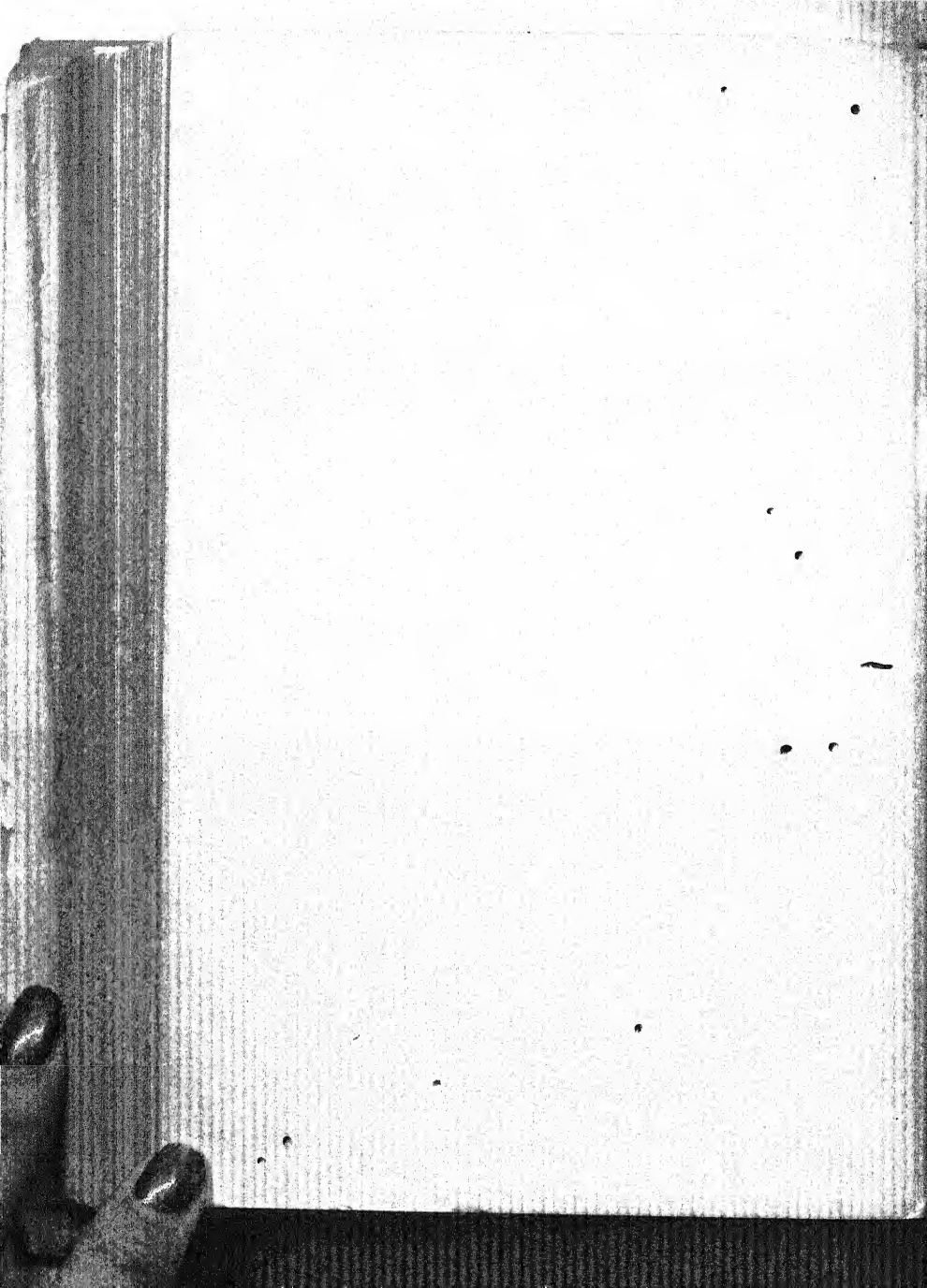

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THIS is a selected list of books which the student will find useful. They will put him on the track of other authorities and sources of information.

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The fullest and most authoritative history of the English constitution from the earliest times to the beginning of the Tudor dynasty.

H. HALLAM.—Constitutional History of England.

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SIR T. ERSKINE MAY.—Constitutional History of England.

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F. W. MAITLAND.—Constitutional History of England.

Describes the state of public law at five selected periods: 1307, 1509, 1625, 1702, 1888. The most brilliant and suggestive account that has yet been written of the development of English constitutional history. I have borrowed very freely from it, knowing that I could draw from no better source.

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G. W. Prothero.—Select Statutes and other Constitutional Documents illustrative of the reigns of Elizabeth and James I.

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C. G. Robertson.—Select Statutes, Cases and Documents to illustrate English Constitutional History, 1660–1832; with a supplement from 1832 to 1894.

This series, published by the Clarendon Press, has valuable introductions and notes, and illustrates the original sources from which the general constitutional histories are derived.

L. O. Pike.—Constitutional History of the House of Lords from original sources.

Perhaps the best book on this particular subject.

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